143

DIVISIONAL FOREST OFFICER SOUTHERN CIRCLE WORKING PLANS PARTY II

DIVISIONAL FOREST OFFICER Inwd Regr No. Date WORKING PLANS PARTY II

WATANS.*

PART I.—Preliminary.

1. A 'Watandár' is defined by the Hereditary Offices Act, Section 4, to mean 'a person having an hereditary interest in a watan.' A person having no present interest or share in a watan cannot be held to be a Watandár. The fact that he may possibly some day become the owner of the watan does not affect his present position with regard to it, which is that of an outsider. (L. R. No. 11, dated 3rd January 1883; *vide* G. R. No. 507, dated 20th idem.)

2. A Watandár is defined in Section 4 of Act III of 1874 to be 'a person having an hereditary interest in a watan.'

Hereditary interest means an interest that a person has obtained through, or which has descended to him from, an ancestor. According to Hindu law, a son by birth acquires an hereditary interest in ancestral estate. But the class that acquires such interest by birth is confined to the lineal descendants of the acquirer of the property, and does not comprise collateral members of the acquirer's family. Such collateral members have the possibility of succeeding to the property if the acquirer's descendants become extinct; but until such descendants become extinct such collaterals have no interest or estate in the property. There is no such thing as a vested remainder in Hindu law.

(Adv. Gen. No. 50,† dated 21st July 1883; *vide* G. R. No. 6444, dated 30th August 1883, and G. R. No. 1887, dated 28th February 1896.)

3. In Section 4 of Bombay Act III of 1874 "Watandár" is defined to mean "a person having an hereditary interest in a watan," and as a mortgagee has an hereditary interest in the property he holds as security for payment of the mortgaged amount so long as the debt remains unpaid, he is a Watandár within the meaning of the Act. The mortgagee can be registered as a representative Watandár when he has established a customary right to serve. (L. R. No. 1461, dated 12th December 1881; *vide* G. R. No. 7803, dated 22nd idem.)

4. The Collector has no jurisdiction to extinguish, or decide on, a claim to be recognised as a Watandár (I. L. R., 2 Bom., 370, *ib.* 375, cf. 2 Bom. H. C. R., 342). His jurisdiction excludes that of the Courts, only on the question as to who are *representative* Watandárs. (I. L. R., 8 Bom., 25; Printed Judgments for 1877, p. 98; Printed Judgments for 1888, p. 224). No claim of a right to serve could be entertained in the Civil Courts (Section 4 (*a*) of Act X of 1876), but the right to a share in the watan might be the subject of a suit against those who claim the exclusive right to the profits. (L. R. No. 1146, dated 1st August 1892; *vide* G. R. No. 6776, dated 23rd idem.)

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* *Vide* also "Village Officers and Servants."

† This opinion is printed *in extenso* at p. 220 of the Compilation of General Rules.

PART II.—WATAN PROPERTY AND PROFITS THEREOF.

1. The following is the form of certificate to be forwarded to a Court under Section 10 of Bombay Act III of 1874:—

I, *A. B.*, Collector of , hereby certify to the Court of the at that the land (allowances of profits) herein below described, constitute (or form part of) the property of the watan of the of mauze in the táluka (and is, or are, assigned as the remuneration of the officiator), and is (or are), therefore, inalienable to any person other than a Watandár of that same watan (or than the officiator for the time being);

And I therefore, under the provisions of Section 10 of Bombay Act III of 1874, forward this certificate to the said Court of the at in order that the attachment placed under its orders (or that the sale, or order of sale, or transfer made by the Court) on the day of last, at the instance of *C. D.*, in darkhást No. of 18 , may be removed (or set aside).

(Signed) *A. B.*,
Collector.

Dated 18 .

Description of the property referred to in the foregoing certificate.

(Signed) *A. B.*,
Collector.

(G. R. No. 2903, dated 21st May 1875.)

2. As to the question whether the share of a sub-sharer in the profits of a watan is liable to attachment when it is not separately entered in the Government books, it does not appear, looking to the definitions of watan and watan-property in Act III of 1874, that it makes any difference whether a share of a sub-sharer in a watan is separately entered in the Government records or not. The only point the Collector has to satisfy himself about, and to certify to the Court, is that the property in question is a portion of the watan, or of the profits thereof. Of course, if the property has been in any way lawfully detached from the watan and no longer forms a part of it, there is no case for the issue of a certificate to the Court. (L. R. No. 139, dated 16th February 1878; *vide* G. R. No. 983, dated 23rd idem.)

3. In applications in the Civil Courts for certificates of heirship in cases in which the alienations of watans are liable to be perpetuated, or in which Government is otherwise interested, the Government Pleader should be instructed to watch the proceed-

ings of each case in the Court, and the Collector should see that the evidence of heirship tendered is trustworthy. (G. R. No. 945, dated 15th February 1881.)

4. No definite instructions as to when and how the Collector should interfere in respect of non-service watans falling within the scope of Sections 9 and 10 of the Bombay Hereditary Offices Act, 1874, are desirable or could very well be laid down. It is better that the Collectors should be left to deal with each case on its own merits, subject to the general power of Government to satisfy itself as to the propriety of the orders which are passed therein. (L. R. No. 153, dated 31st January 1882; *vide* G. R. No. 998, dated 13th February 1882.)

5. The Collector must decide on its merits each case in which a non-service Watandár applies for a certificate under Section 10 of the Bombay Act III of 1874, and there is no objection to the grant of a certificate to a sub-sharer whose name is not entered in the Government records. (G. R. No. 7903, dated 6th October 1884.)

6. The following opinion of the Remembrancer of Legal Affairs (No. 691, dated 21st March 1887) was communicated to the Divisional Commissioners and Collectors:—

"In reference to your memorandum No. 2355, dated the 19th ultimo, I have the honour to state my opinion as follows regarding the attachment of the cash allowance payable to the deshpándes of pargana Ahirváda, táluka Sholápur, under the circumstances explained by the Commissioner, C. D., in his No. R.—1079, dated the 28th March.

"It appears that Gopál Hanmant in 1863 obtained a decree of the Civil Court establishing his right as hereditary deputy to obtain payment of a certain sum annually out of the income of the deshpánde watan. In execution of this decree a warrant has been issued to the Mámlatdár of Sholápur directing that Rs. 658, otherwise payable to the deshpánde during the present month, be attached and forwarded to the Court for payment to Gopál Hanmant, the decree-holder.

"The question now is whether the Collector should issue a certificate under Section 10 of the Bombay Watan Act to set aside the Civil Court's process.

"In my opinion no such certificate can legally be issued.

"The first part of the section refers to cases where watan property, assigned under Section 23 as remuneration of an officiator, has passed after the Act came into force or may pass without the sanction of Government into the ownership or possession of any person other than the officiator.

"This portion of the section is clearly inapplicable. It is not contended that the cash allowance attached has been assigned as remuneration for the officiator, and as no deshpánde service is now required, there can apparently be no official remuneration.

"The second part of the section provides that when it appears that any part of a watan or any of the profits thereof not so assigned has or have passed or may pass by virtue of or in execution of a decree into the ownership or beneficial possession of any person not a watandár of the same watan, the Court shall, on receipt of a certificate of the Collector stating that the property to which the decree or order relates is a watan or part of a watan or that such pro-

perty constitutes the profits or part of the profits of a watan, * * * * remove any attachment or other process.

"Under the second part of this section the Collector can only issue his certificate to prevent the watan or any portion of it passing into the hands of a person who is not a Watandár of the same watan.

"The question then is whether the decree-holder, Gopál Hanmant, is a Watandár of this watan.

"That question must, I think, be answered in the affirmative. It is true he is not registered as a representative Watandár, as when he applied in 1880 to be so registered the Collector held that as the deshpánde service was not required no one could be recognised as representative Watandár. With this decision, of course, the Courts cannot interfere, as it is a matter entirely within the cognizance of the Collector. But none the less Gopál Hanmant appears to be a Watandár of this watan though not registered as a representative Watandár. The distinction is explained in *Rámchandra* vs. *Anant* (Indian Law Reports VIII, Bombay, page 25).

"In the Watan Act Section 4, a Watandár is defined as a person having an hereditary interest in a watan. It seems hardly possible to hold that Gopál Hanmant has not such an interest. The decree of 1863 is not before me, but it is fully explained in the judgment of Westropp, C.J., in Miscellaneous Appeal 7 of 1876. It was there held that 'Gopál's status as hereditary deputy Watandár having been ascertained and established in 1863 is a fact which neither a Revenue nor a Civil Court could ignore or re-open. It is a *res judicata*.' The decree declared that he had an interest in the watan and was entitled to receive therefrom a certain sum annually. He, therefore, fulfils the definition of Watandár given in the Act, and I do not think that any certificate ought to be issued under Section 10.

"It is true that one was given in 1875 which the High Court was unable to set aside, though their Lordships supposed it was passed in ignorance of the terms of the decree of 1863; and now no doubt, if a certificate were issued, the Courts would be obliged to act upon it.

"But although such a certificate, if granted, would be effective, it, of course, cannot be issued otherwise than as prescribed by the Act, and I think in 1875 it must have been given under some misunderstanding.

"It may be argued that the non-service settlement abolished Gopál's office of hereditary deputy. No doubt the occasion for his services has ceased. But his interest in the original watan was a species of property of which he could not be deprived by any arrangement between Government and the deshpánde to which he was not a party. Service lands (or allowance) are a property, not merely a remuneration (*vide* the remarks of West, J., on page 215 of Indian Law Reports, Bombay, IX.): and this principle seems to apply no less to the emoluments of the hereditary deputy than those of the original deshpánde.

"For the above reasons I consider that no certificate can be issued in this case under Section 10 of the Watan Act and that the order of the Court should be accepted."

(G. R. No. 4188, dated 7th July 1887.)

7. In Cross-appeals Nos. 72 and 79 of 1888 from the Belgaum District, the Honourable Sir Charles Sargent and Mr. Justice Hart passed a decision on the 20th January 1890 (P. J. for 1890, 112, 113), which places the question of the inalienability of the district hereditary officers' watan lands to which Gordon's settlement was applied beyond doubt.

The present position of the matter is this, *viz.* :—

(1) As regards alienations since the 28th January 1887 (the date on which Bombay Act V of 1886 became law), sub-section (2) of Section 5 of Bombay Act III of 1874, as amended by Section 1 of Bombay Act V of 1886, applies.

(2) As regards alienations previous to that date which have already been finally adjudicated, nothing can be done.

(3) As regards alienations previous to that date which have not already been finally adjudicated, the High Court's ruling quoted above should be relied upon.

Officers who receive notices for the attachment before judgment of amounts alleged to be payable at Government treasuries on account of "haks" are legally responsible for giving immediate effect to them and for holding the money, if any, payable as therein described in deposit until the further order of the Court. But if the "haks" have been subjected to Gordon's settlement and the case does not fall under clause (2) of the preceding paragraph, the Collector should issue a certificate to the Court under Section 10, Bombay Act III of 1874, as amended by Bombay Act V of 1886, Section 3, in order that the attachment may be removed, But until the attachment is removed by the Court, the money should be held in deposit. (L. R. No 1139, dated 4th August 1890; *vide* G. R. No. 5920, dated 20th idem.)

8. The Collector can grant certificate under Section 10 of Bombay Act III of 1874 in the case of a watan, in respect of which a settlement had been made under Gordon's settlement prior to the passing of the Act. (G. R. No. 3850, dated 22nd May 1895.)

9. The following opinion of the Remembrancer of Legal Affairs, No. 1599, dated 15th October 1890, was communicated to the Commissioners and Collectors :—

"One Ramchandra Anant Parchure claims the right to have his name entered as purchaser, at a Court's auction sale, of certain Deshmukhi and Sardeshmukhi lands.

"2. The Collector and the Commissioner have refused to grant the request. The lands in question were admittedly service lands, settled, not under the Act (Bombay II of 1863), but by the Gordon Committee.

"3. The Commissioner, N. D., expresses the view that the lands in question were under the ruling* quoted by the Honourable Mr. Naylor, C.S.I., in his No. 1139 of 4th August 1890, inalienable.

**Apáji Bápuji* vs. *Keshav Shamrão*—B. H. C. P. J., 1890, p. 109.

"4. Neither Mr. Naylor's report nor the High Court's judgment seems to go so far as to say that service lands under the Gordon settlement were or are absolutely inalienable.

"5. In the suit referred to, the ground on which plaintiffs relied was, that watan service lands could not be affected by auction sales in execution of decrees against their father *beyond his life.*

"The Court observed: 'At the time when the Gordon settlements were made, service lands were regarded as the remuneration of the Hereditary Officer and made inalienable by Regulation XVI of 1827 (as construed by the Courts) *beyond the life of the actual incumbent.*' The High Court only considered 'how far *this* quality of inalienability was affected by the Gordon settlements.' It was not contended, much less held, that the Gordon sanads created any new and additional inalienability.

"6. Prior to Bombay III of 1874, watan service lands were regarded as held on a tenure of successive life estates, and *the prohibition* against alienation, it was held, *did not extend to an alienation for any period not exceeding the lifetime of the Watandár, the incumbent.*

'9 B. H. C. R., 282; see also I. L. R. 10 B., 39, and cf. I. L. R. 10 B., 372.

IV. B. H. C. R. 13, and I. L. R. 1 B., 537.
Cf. I. L. R., 6 B., 211.
" " 7 B., 420.
" " 5 B., 439.
" " 14 B., 404.

"7. Bombay Act III of 1874, Section 5, prohibited *all* alienations of watan outside the watan family, unless sanctioned by Government, and thus restrained alienations even of the life estate.

"8. The Courts, however, recognise the injustice of allowing a man to take advantage of such a provision to repudiate charges created by himself on his own life interest. A Watandár is therefore held estopped from profiting by the invalidity of his own alienations (I. L. R., 14 B., 404).

"9. The Legislature, perhaps with a view to prevent fraud as well as to enable life incumbents to deal with their own interests so long as they do not affect those of their successors, has (Section 1, Bombay V of 1886) limited the restriction to alienations extending beyond the term of the alienor's natural life. Section 7 of Bombay III of 1874, however, would still invalidate unsanctioned alienations of watan assigned as the remuneration of an officiator.

"10. It was only so long as Section 5 of Bombay III of 1874 remained unamended by Bombay V of 1886, Section 1, that an alienation of the *life estate* of unassigned watan was void without sanction. But, as pointed out, the alienor is estopped from urging the objection.

"11. The Collector no doubt *might* raise such objection in the interests of Government. But Government would probably never desire that he should do so in the case of a *non-service* watan, when, as no interests of Government are involved, such interference would operate merely to enable a man to repudiate his own debts.

"12. No doubt, it seems, can exist as to the validity of an alienation by an actual incumbent of his life estate, if effected—

(*a*) prior to Bombay III of 1874, or

(*b*) subsequent to Bombay V of 1886,

even without the sanction of Government.

"13. No alienation, however, beyond the life estate—

(*a*) of* uncommuted service watan, or

(*b*) of watan settled by the Gordon Committee,

is or ever was valid without the sanction of Government.

* I. L. R., 5 B., 437.
I. L. R., 10 B., 34.
P. J. for 1890, p. 109, and cases quoted *supra*.

"14. When therefore a person claims recognition as the alience of a watan of either of these descriptions, the first question to be considered is (if the watan be unassigned) whether the claimant's alienor is still the actual incumbent or not. If the alienor is still the actual incumbent, he cannot

repudiate the charge on his life estate, and Government would probably refuse to do so and indeed could do so only if the alienation were between the dates* when Bombay III of 1874 and Bombay V of 1886 came into force.

* 5th February 1875 and 28th January 1887.

"15. In the present instance the alienation took place by Court sale in 1872. The claimant or his representative in interest therefore then purchased the life estate of the person whose interest he bought, but no more. The question is whether that person (whose name appears to be Hanmantráv Ápáji Pátankar) is still alive. If he is dead, the life estate which was all the claimant could legally have bought, has ceased to exist, and the claimant has no right whatever to recognition by the Collector. But if that life estate still continues, an entry in the Collector's records recognizing the extent of the claimant's interest would probably be found convenient to protect the Revenue Authorities from error which might prejudice the claimant and give him a cause of action.

"16. The claimant cannot in any case *demand* the entry of his name in the Collector's book or sue if he is refused. For the books are kept for fiscal purposes and for the guidance and information of Revenue officers and not as evidence of title. But the Revenue Authorities, however, would be liable if, misled by the inaccuracy of those records, they took any course of action prejudicial to the claimant's rights, as for instance by ignoring the interest which he has to prevent a forfeiture. There could, it seems, be no objection to insert under the name of Hanmantráv Ápáji, if he is still the incumbent, some such entry as the following :—

10 B.H. C.R., 134.
10 " " 187.
10 " " 192.
10 " " 197.
7 " " 99.
I. L. R., 3 B., 134.
I. L. R., 13 B., 75.

हणमंतराव आपाजी पाटणकर याचा ताब्यात इक कोर्टमार्फत लिलांत विकत घेणारा रामचंद्र अनंत परचुरे.	"Ramchandra Anant Parchure, auction purchaser of the life interest of Hanmantráv Ápáji Pátankar."

(G. R. No. 7675, dated 29th October 1890.)

10. Government concurred in the views expressed by the Legal Remembrancer in the following report and approved of the suggestion made in paragraph 7 thereof :—

"The Collector of Khándesh has, in consequence of Government Resolution No. 8443, dated 26th November 1890, forwarded to me, for revision and adaptation, a certificate to be issued to a Civil Court for the removal of attachment from certain watan property.

"2. The form of certificate drafted by me and approved by Government Resolution No. 3697 of 29th May 1890 was applicable to cases of attachment of watan assigned under Section 23 of the Bombay Hereditary Offices Act, 1874, as remuneration of an officiator.

"3. The Act gives special protection to the interests of the public service in such cases by declaring property so assigned '*not liable to process of any Civil Court.*' It is inapplicable, but may of course be adapted to the case of an attachment of ordinary unassigned watan. In the case of unassigned watan, however, the power of alienation without Government sanction has, as I

No. 8513 of 20th December 1888.
No. 4282 of 19th June 1890.
No. 7675 of 29th October 1890.

pointed out in the reports quoted in the Government Resolutions marginally noted, been recognised by Section 1 of Bombay V of 1886, as extending to the life interest of the alienating incumbent.

"4. The alienating incumbent is himself estopped from denying his right to alienate (I. L. R. XIV B., 404). But as noted in my No. 597 of 31st May 1890, Section 10 of Bombay III of 1874 was not modified in accordance with Bombay V of 1886, so that the Collector has still the power to issue a certificate in respect of an alienation which under the amending Act it is yet competent to the alienor to make without sanction.

Government Resolution No. 4282 of 19th June 1890.

"5. In my No. 1262 of 23rd November 1888 I ventured to lay stress on this anomaly, and to submit that Government would probably not approve of the Collector taking action so inconsistent with the spirit of the amending Act, merely to enable a man to repudiate his own liabilities when he would be estopped from disputing them on his own account.

"6. In the present instance the watan property is unassigned watan brought under the Gordon settlement. No doubt, it may, owing to the antinomy between Section 10 of Bombay III of 1874 and Section 1 of Bombay V of 1886, be legally *possible* for the Collector to issue a certificate under Section 10 of Bombay III of 1874 (see Printed Judgments of 1890, pages 112, 113). But I would submit that on the grounds stated in my No. 1262 of 23rd November 1888, it is improper that such interference should be made in cases of this nature, as it is not necessary to protect the interests of the public service and could only operate to enable debtors to repudiate liability for their own debts.

"7. I would venture to submit that the Collector's interference might be properly limited to cases affecting—

(*a*) watan assigned as remuneration of an officiator,

(*b*) watan on which it is attempted to enforce a charge or liability created by some person deceased,

in which case alone no private sale could take place without the sanction of Government.

"8. If every attachment affecting the life interest of a Watandár debtor is to be set-aside by issue of certificate, the result will be that Watandárs will be able through the medium of the Collector to repudiate charges on their own life interests which they would be estopped from repudiating on their own account.

"9. This, I think, is opposed to the spirit of the law and probably also to the wishes of Government. But as no distinct orders have as yet, I believe, issued on the subject, I would venture before revising the certificate sent by the Collector of Khándesh to solicit the instructions of Government as to whether such certificates are to be made applicable to any attachments other than those referred to in my paragraph 7 above."

(L. R. No. 484, dated 4th April 1891; *vide* G. R. No. 2917, dated 28th idem.)

11. Section 9 of the Hereditary Offices Act, III of 1874, is inapplicable to alienations made before the Act came into force, and which took place either by virtue of, or in execution of, a decree or order of a British Court or with the consent of the Collector and a mutation of names in the revenue records. (L. R. No. 284, dated 5th March 1883; *vide* G. R. No. 2253, dated 19th idem.)

12. The terms of Section 12 (*a*) of the Hereditary Offices Act are sufficiently wide to authorize the Collector to evict a person whom, on appeal, he considers his Assistant has wrongly placed in possession of land under Section 9, and to make over the land to the person to whom he decides it should be given. (L. R. No. 293, dated 6th March 1883; *vide* G. R. No. 2507, dated 28th idem.)

13. In cases in which a portion or the whole of the watan lands of the village officers may be resumed but their services may still continue, the loss is simply that of the occupancy right of certain lands, and its value should be calculated on the principles that would regulate the compensation to be paid for the loss of similar rights to private individuals. This being thus compensated for, the diminution of profit by the loss of rent-free lands from the watan should be made up by a corresponding increase of cash remuneration equal to the assessment of the lands.

In cases in which in consequence of the resumption of the lands of villages the necessity for the service of village officers may cease or their scale allowances be diminished, the loss of occupancy rights in watan land should be similarly compensated for, and that on account of cessation of hereditary service or diminution of watan emoluments according to scale on a smaller realizable amount of land revenue separately considered. For this one-third of the full value of the watan in cases in which service may be entirely dispensed with, and one-third of the scale value of the land resumed or otherwise appropriated in cases in which service is continued but the watan emoluments diminished by the lessening of the village area, shall be deducted from the total value of the watan and that of the portion resumed or otherwise appropriated, respectively, and fifteen times the balance be paid to the hereditary officers concerned as compensation for the total or partial deprivations of their watans.

Where only such small portion of village lands may be left in any case as to render it advisable to incorporate them in an adjacent village, the sanction of Government should be obtained by the Commissioner on a report submitted in consultation with the Survey Department.

(G. Rs. No. 5974, dated 4th December 1872, and 5194, dated 16th September 1873.)

14. The decision in *Ráoji Raghunáth* vs. *Mádhavráo Vishwanáth* (2 Bombay High Court Reports, page 250) was passed in A. D. 1864, several years before the Hereditary Offices Act became law. It was based upon the ruling that the holder of an hereditary office was simply a tenant for life which the Court said 'had been frequently decided.' These decisions dated, in fact, from the year 1829, being based upon Section 20 of Regulation XVI of 1827. The Sadar Diváni Adálat's 'Interpretations' (Harrison's Code of 1849, Vol. 2, pages 757-8) of this section are the original authority for this course of decisions.

Section 20 of Regulation XVI of 1827 was, however, repealed by the Hereditary Offices Act, and the law substituted for it is that contained in Section 5 of the Hereditary Offices Act, which authorizes alienation to a Watandár of the same watan, but not to an outsider, except with the sanction of Government.

The hereditary office being a part of the watan (*vide* definition of 'watan' in Section 4 of the Hereditary Offices Act), the terms of Section 5* apply to alienations of it. To a Watandár of the same watan such an office may be alienated in perpetuity, or for life or any other term, at the owner's pleasure; to an outsider it cannot be alienated at all without the sanction of Government. If a representative Watandár alienates in a lawful manner his right of service, the alienee becomes thereby 'the representative Watandár' in his stead. Recognitions of transfers of hereditary offices should, therefore, be regulated by these considerations.

* Amended by Section 1 of Act V of 1886.

There ought to be no objection to substituting the name of the lawful alienee of a representative Watandár in the register, if there is no question and no doubt as to the alienation and as to its legality. When there is any question between the parties as to the fact of the alienation, or as to its validity as against any of them, they should be desired to produce a decree of a competent Court under Section 36 of the Act before any mutation of names in the register is allowed.

(L. R. No. 281, dated 5th March 1883; *vide* G. R. No. 2776, dated 7th April 1883.)

15. The conditions in Section 9 of Bombay Act III of 1874 that the Collector's consent should be obtained and there should be a transfer in the records, affect only transfers before the passing of the Act otherwise than by virtue of a decree of a Court.

When a watan or a part of a watan has before the date of the Act coming into force passed by virtue of or in execution of a decree or order of a British Court into the ownership or beneficial possession of any person other than the officiator, the watan or part of watan is liable under Section 8 only to a contribution for remuneration in like manner and to the like extent as if no such decree had been passed. (G. R. No. 8051, dated 11th October 1884.)

16. There is nothing to prevent watan property descending to a daughter's son when such person is the legal heir according to Hindu law. (L. R. No. 283, dated 27th March 1878; *vide* G. R. No. 1737, dated 4th April 1878.)

17. The following opinions of the Remembrancer of Legal Affairs on the question of the title of a daughter married out of a watan family to succeed to her father's watan and of her husband to officiate as her deputy were communicated to the Commissioners and Collectors:—

"Government have decided on several occasions that a daughter married out of a watan family is not by reason of such marriage divested of her rights and does not lose her status as Watandár.

"2. In the present instance it appears that the petitioner has already been recognised as representative Watandár, and that under Section 51 of the Bombay Hereditary Offices Act, 1874, she appointed her husband to be her deputy. As Section 53 of that Act provides that none but a Watandár shall be appointed as deputy, the question is whether the petitioner's husband can be deemed to be a Watandár, that is 'a person having an hereditary interest in a watan' within the meaning of that section.

"3. The answer to this question must depend upon the decision of the other important question whether the watan property which a daughter inherits from her father is 'stridhan,' and, therefore, transmissible to her heirs, or whether it is a limited and restricted estate only, that is to say, which she is entitled to enjoy for her lifetime, and on her death devolves on the line of the last male owner, her father.

"4. If the watan is regarded as 'stridhan' it seems clear from the best authorities that on the death of the daughter her children are entitled to inherit it, and if she has no children, her husband will be her heir and on failure of him his nearest 'sapindás;' which term includes, on the father's side, all blood relations within six degrees together with the wives of the males, and on the mother's side, those within four degrees. Consequently no objection could be taken to the appointment of the Watandár's husband or one of his relations within those degrees as her deputy.

"5. There is, however, a very great difference of opinion on the subject. The Bombay High Court have ruled that according to Hindu law on this side of India property inherited by a married woman from her father descends on her death to her own and not to her father's heirs (*see* I Bombay High Court Reports, 209). Subsequently, the same Court held that the property acquired by a married woman by inheritance, with the exception of property inherited by a widow from her husband, classes as stridhan and descends accordingly (*see* 6 Bombay High Court Reports, 1). Lastly it was decided in an elaborate judgment by Mr. Justice West (8 Bombay High Court Reports, 244) that the Mitákshara (which is the highest authority in this Presidency) recognises only one class of 'stridhan' and includes in that

class *all* property acquired by a woman by inheritance, and if she has been married according to one of the approved forms, on her death childless, descends to her husband and his 'sapindás;' but over 'stridhan' acquired by inheritance her power of alienation is limited. So, too, in the latest case reported in Indian Law Reports (III Bombay, 171), the Chief Justice (Westropp) held that the daughter had succeeded not to a qualified estate, but to an absolute and several estate in her father's immoveable property.

"On the other hand the rulings of the High Courts of Calcutta and Madras are quite opposed to the Bombay rulings, and have been entirely approved of by the Privy Council in *Chotay Lall* vs. *Chimna Lall* (6 Law Reports, Indian Appeals, 15). In commenting on Mr. Justice West's judgment, the Chief Justice of the Calcutta High Court in this case pointed out that there was no substantial difference of opinion on the law between the Calcutta and Madras High Courts and that they ought not to unsettle the law which had been received for the last fifty years on account of the opinion of a Judge of the High Court at Bombay, however learned he may be. The Privy Council observed that the question of the daughter's estate cannot be considered as '*res integra*;' that the result appears to be that the Courts in Bengal and Madras have determined in a series of decisions that the daughter takes a qualified estate only, whereas in the Courts of Bombay there have been rulings and *dicta* in favour of the view that she takes the entire property. But 'their Lordships do not think it necessary, especially after their own decisions as to widows' estates, to go into an examination of the Indian cases. They agree in the conclusion of the Calcutta High Court affirming the law as stated by Sir William Macnaughton, that immoveable property acquired by a daughter by inheritance, on her death in default of issue male, goes not as 'stridhan' to her husband or other heir, but reverts to her father's heirs.'

"7. It must be observed that this difference of opinio[n] rests on a different interpretation of old and obscure texts. The original text of the Mitákshara, it is stated in the above judgment of the Privy Council, does not afford any foundation for the argument in favour of the right of the daughter to the entire interest in land acquired by inheritance, though the interpretation of the Commentator, Vijnaneshvar, on which Mr. Justice West's reasoning rests, does. It seems, therefore, that there is a preponderance of decisions against the Bombay rulings. What would be the result of an appeal to the Privy Council from this Presidency it is not easy to say. Mr. Justice West observes that it is reasonable to suppose that in such case his arguments would have much weight with their Lordships. In the Calcutta appeal, however, the Privy Council had an opportunity of weighing the Bombay rulings as they are carefully reviewed in the judgment of the Chief Justice Couch which was on appeal before their Lordships. The conclusion come to by their Lordships is that it was unsafe to open the question and unsettle a rule of inheritance affirmed by a long course of decisions.

"8. The question of course now is whether Government should follow the law as stated by the Bombay High Court or as it is stated by the High Courts of Bengal and Madras, and recognise the female Watandár's husband or his relative as having an hereditary interest in the watan.

"9. In deciding this question it must be remembered that the Bombay rulings extend over a period of some twenty years and were laid down by Judges whose reputation for learning is beyond all question—Sir Mathew Sausse, Sir Joseph Arnold, and Mr. R. West, and have been followed and accepted as the law by the people of this Presidency. The Bengal and Madras rulings, though entitled to every respect, are not binding here, while the judgment

of the Privy Council cannot be said to decide the question in its direct applicability to the people of this side of India.

"10. On the next occasion of the question arising as it almost certainly will, the Bombay High Court Judges will have to decide it in the light of the Privy Council's decision, and it remains to be seen whether the High Court will adhere to its former view of the law as applicable to this Presidency or will alter it in accordance with the views of the Bengal and Madras Courts.

"11. I can, therefore, see no objection to the Bombay rulings being followed in the present instance, as it is clear the husband is otherwise fully competent to officiate as deputy for his wife. Government can safely leave it to the members of the original Watandár's family on the death of the female representative Watandár to contest with her husband or his relatives the question of the devolution of the watan estate which I have now discussed." (L. R. No. 323, dated 13th March 1882.)

"In continuation of the remarks contained in my report No. 323 of 13th instant on this difficult question of Hindu law, I now beg to draw the attention of Government to a remark made by Mr. Justice Melvill in a case reported in the last number of the Indian Law Reports (*see* Volume VI, Bombay Series, page 87, *Bulakhidás* vs. *Keshavlál*). Mr. Justice Melvill says: 'In this Presidency, and especially in Gujarát from whence this case comes, the Vyavahara Mayukha is a principal authority, and on the strength of Chapter IV, Section 8, paragraph 10 of the Mayukha it has become the established rule in this Presidency that daughters take by inheritance an absolute estate and not a limited interest as they would under the Mitákshara.' It seems quite clear from this remark that the interpretation of the Mitákshara which has been unhesitatingly adopted by the Privy Council must be accepted in this Presidency, but inasmuch as the Mayukha is a principal authority in this Presidency and more especially in Gujarát, we must fall back on the Mayukha which Mr. Justice Melvill declares to be a sufficient authority that daughters take not only absolute but several estates, and consequently, when not having any issue, may dispose of such property during life or may devise it by will." (L. R. No. 342, dated 17th March 1882.)

(G. R. No. 2318, dated 8th April 1882.)

18. A Collector having enquired, with reference to Government Resolution No. 2318 of 8th April 1882, how the names of heirs are to be entered in the watan register of patelki and kulkarni watans in the following cases:—

1. A representative Watandár dies leaving 5 widows of different ages and married at different times, some under 'lagna' ceremonial and others under that of 'pat.' How and whose names should be registered? Is the Collector to find out who is the eldest of them, and if so, is the seniority to be determined by her age or by precedence in marriage?

2. A representative Watandár dies leaving no male issue nor a widow, but three daughters married to different persons in different families: which of the three should be entered? Legally they have equal rights. Are they, then, all three to be registered as representative Watandárs and a rotation established against the custom of the watan?

3. A representative Watandár dies leaving two widows, one of them was married under 'lagna' ritual and the other under that of 'pat.' The eldest widow dies leaving a daughter, who prays she may be recognized as representative Watandár. The widow, her step-mother, claims to be entered as representative Watandár. Should the name of the widow be registered?

4. There is a Hindu watan family of which one member is registered as representative Watandár. He dies leaving a daughter and also four brothers. The family is divided as regards other property, but undivided as regards the watan; are the brothers to be entered as representative Watandárs in preference to the daughter?

the following opinion was recorded by the Remembrancer of Legal Affairs:—

"The term 'nearest heir,' which is used in Section 36 of Bombay Act III of 1874, is not a very accurate one; but looking to the fact that only one person's name can be registered in the room of that of a deceased representative Watandár, whilst there may frequently be several co-heirs of the deceased person all equally near to him in relationship, the meaning of the Act is not, I think, doubtful. Thus in his report No. 325 of 13th March 1882, the late Mr. Cordeaux, when acting for me, submitted an opinion that the Collector should register the elder of two daughters of a deceased female representative Watandár as the representative Watandár in her stead, and Government, in their Resolution No. 2321 of 8th April 1882, approved of this advice. The context shows, I think, that what the section means is that the Collector should recognise as representative Watandár the senior amongst co-heirs of the same degree of relationship and the nearest relation amongst heirs of different degrees of relationship. And by senior I do not mean the eldest in age, because a second or third wife is often older than her predecessor or predecessors, but I mean the one who, whether by birth or marriage, first acquired the status which gave him or her the right of inheritance.

"2. Following this view of the intention of the law, I would answer the Collector's questions thus:—

1st.—The senior of the five widows by precedence in marriage should be the representative Watandár.

2nd.—The eldest daughter should be recognised as representative Watandár.

3rd.—The daughter does not inherit so long as a widow survives; the widow, therefore, has been rightly recognised as the representative Watandár. There is no difference as regards the right to inherit between a '*lagna*' wife and a '*pát*' wife.

4th.—The family must be regarded as undivided, in which case the three brothers are the deceased's heirs, and the eldest of them should be recognised as representative Watandár."

(L. R. No. 545, dated 17th April 1884; *vide* G. R. No. 3530, dated 2nd May 1884.)

19. A daughter takes by inheritance an absolute estate just as a son would, but, if the estate be watan, the interest therein is so far limited by express enactment as provided in Section 5 of the Bombay Act III of 1874.* (L. R. No. 1375, dated

* *Vide* also Section 2 of Bombay Act No. V of 1886.

18th October 1882; *vide* G. R. No. 7789, dated 7th November 1882.)

20. The word 'through' in Section 2 of Act V of 1886 implies some intermediate link between the claimant and the last holder, and does not apply to the case of a son claiming his mother's property as such. It can hardly be said that a person claiming direct from the last holder in whom the whole estate was vested, claims through such holder.

The Full Bench decision of *Bhágirthibái* vs. *Káhnujiráv*, 11, I. R., Bombay, 285, decided that under the Hindu law prevailing in the Presidency of Bombay a daughter inheriting from either mother or father takes an absolute estate which passes on her death to her own heirs and not to those of the preceding owner. This decision overruled the opinion expressed in the case of *Dalpat* vs. *Bhagvan*, 9, I. R., Bombay, 301, that daughters would not take such an absolute estate in cases governed by the Mitákshara, and lays down the law on the point for this Presidency. It follows that law over the whole of the Bombay Presidency that the heirs of a daughter on whom a watan had devolved before Act V of 1886 came into force will succeed to it on her death.

(L. R. No. 102, dated 24th January 1888, and Adv. Gen. No. 11, dated 24th February 1888; *vide* G. R. No. 2793, dated 3rd May 1888.)

21. Section 2 of Bombay Act V of 1886 enacts that, with one exception, every female member of a watan family is to be postponed in the order of succession by inheritance to the watan property to every male member of the family qualified to inherit. This provision is obviously intended to operate whilst there are both male and female members of the family entitled, under the law of inheritance applicable to them, to succeed to the watan property. It deprives it of all meaning to hold that it operates only when no male member of the family qualified to inherit any longer survives. It is not, therefore, right to hold that the one female excepted by the section from its provision, *viz.*, "the widow of the last male owner," can only claim the benefit of the exception, when owing to failure of male heirs, the property would otherwise lapse to Government. The words "last male owner" do not mean, as suggested by Mr. East, only the last surviving male representative of the watan family. The section applies at every succession by inheritance to watan property. If, according to the law of the parties, a female would on any occasion succeed, she, unless she be the widow of the last male member of the family who owned the property, is to be postponed in the order of succession to every male member of the family qualified to inherit. (L. R. No. 1229, dated 24th July 1891, and Adv. Gen. No. 82, dated 29th August 1891; *vide* G. R. No. 6402, dated 16th September 1891.)

22. In the case, 5, Bombay High Court Reports, 161, it was held that 'where there is a plurality of wives equal in caste, the sons of each wife (not being the first wife) take precedence according to the dates of their respective births and without reference to the dates of the marriages of their respective mothers.' In that case the litigation was between the son of a second wife and the son of the third wife, so that it was unnecessary for the Court to decide, and it did not decide, how the law would be as between the son of a first wife and the son of any subsequent wife.

The Bombay High Court followed in that case the decision of the Madras High Court in *Sivananaja* vs. *Muttu Ramalinga* (3, Madras High Court Reports, 75) in which it was held that 'as regards the rights of sons by different wives to inherit* * * (except perhaps the son of the first wife) the priority in point of time of their mothers' marriages has never been regarded when the wives were equal in caste and rank.' In the case, also, the Court did not decide whether a distinction exists in favour of the younger son of a first wife, but merely said that 'perhaps' the case of such a son is exceptional.

In *Ramalakshmi Ammal* vs. *Sivanantha Perumal Sethurayar* (14, Moore's Indian Appeals, 570) the Privy Council also decided to the same effect as the above, still leaving the question as to the legal position of a junior son born of a first wife an open one.

But in *Pedda Ramapa* vs. *Bangari Sheshaunna* (Indian Law Reports, 2 Madras, 286) the Privy Council distinctly held that there was no distinction between the son of a first wife and of any subsequent wife. It was held generally that 'among sons born of wives equal in their class, and without any other distinction, there can be no seniority in right of the mothers.' It is true that the dispute in this case was between the son of a third wife, and the son of a fourth wife. But it was claimed for the former that after the death of the first and second wives his mother (the third wife) stood in the position of a first married wife, and it was on this ground that their Lordships inquired into and settled the position of a son of a first married wife.

It is, therefore, now settled law that the junior son of a first married Hindu wife takes no precedence over the senior son of a subsequent wife, if both wives are of equal class.

(L. R. No. 326, dated 4th March 1884; *vide* G. R. No. 2499, dated 21st idem.)

23. Amongst Sudras the right of succession undoubtedly devolves on illegitimate sons in the absence of legitimate sons, sons' sons or sons' sons' sons. It does not appear that watan property form any exception to the general rule of succession in this respect. (L. R. No. 1695, dated 22nd December 1884; *vide* G. R. No. 104, dated 7th January 1885.)

24. According to the general Hindu law, as interpreted by recent decisions, it seems clear that a

widow's own heirs can never succeed to immoveable property inherited by her from her husband. See Mayne's Hindu Law, paragraphs 519—525, *Bhagvandas* vs. *Mynabai*, 11 Moore I. A., 487, 513, and *Collector of Masulipatam* vs. *Cevely*, 8 Moore I. A., 529.

But this, like all other rules of Hindu law, is liable to be overruled by proof of a special custom to a different effect, and the passages in Steele, 231, West and Bühler, 540 and 541, and the opinion cited at West and Bühler, 546, point to there being in some parts at least of the Deccan a custom under which a widow's own heirs do in the absence of any heir of her husband succeed on her death to immoveable property inherited by her from him.

(Adv. Gen. No. 12, dated 24th February 1889; *vide* G. R. No. 6288, dated 27th August 1889.)

25. Section 9 of Act III of 1874 does not apply to cases in which a watan, its profits, or part thereof, have passed into the ownership of, or beneficial possession of, a person who is a Watandár of the same watan.

A Watandár is defined in Section 4 as a person having "an hereditary interest in a watan."

The meaning of the phrase "having an hereditary interest in a watan" has been discussed* in the marginally noted papers.

*(1) Legal Remembrancer's No. 11 of 3rd January 1883 (Government Resolution No. 507, Revenue Department, of 20th January 1883).
(2) Legal Remembrancer's No. 554 of 27th April 1883.
(3) Advocate General's No. 50 of 21st July 1883.
} Government Resolution No. 6444, Revenue Department, of 30th August 1883.

The arguments in those papers seem to show that no one has an hereditary interest in a watan, or can be regarded consequently as a Watandár, until he has actually succeeded thereto, unless he is of the class known to Hindu Law† as unobstructed (*apratibandha*) heirs, that is, sons, sons' sons and their sons.

† Mayne on Hindu Law, Sections 247, 248.

Sons' sons and their sons have an interest in the ancestral property vested in them from their birth. The interests of all other persons who *may* succeed are contingent and dependent on default of persons preferentially entitled, and as their titles may be defeated by unforeseen contingencies, they have no hereditary interest till they actually succeed in the absence of other heirs.

Under Regulation XVI of 1827, Section 20, no person could succeed who was not of the family in which the office was vested.

A married daughter is not, strictly speaking, of her father's family,‡ but on marriage enters the *gotra* of her husband.

‡ West and Bühler, 129.

The object of the Regulation was to keep the watan in the family to which it was originally granted. A daughter takes an absolute estate,* her own heirs inherit † and she becomes a new stock of descent.‡ The Sadar Diváni Adálat seems to have held § that females were precluded by Section 20 of Regulation XVI of 1827 from succeeding to a watan.

* I. L. R., XI B., 285.
† West and Bühler, 335.
‡ Maine, Section 479.
§ *In re Gulab* vs. *Abherám et al.* 19th May 1832.
8 Bom. H. C. Rep., 85, note.

Subsequent, however, to the passing of Act XI of 1843 the High Court has frequently recognised the right of a female, even as a daughter,‖ to succeed, as she is "allowed to appoint a deputy"¶ and is bound if required to furnish an efficient substitute.¶

‖ 5 Bom. H. C. Rep., 202; A. C. J.
8 Bom. H. C. Rep., 83.
Bom. H. C. P. J., 1872, S. A. No. 304 of 1871, 8th March 1872.
¶ Bom. H. C. P. J. 1881, p. 270.

Section 20 of Regulation XVI of 1827 having been repealed by Bombay III of 1874, Section 2 and Schedule (*vide* Act XII of 1876, Section 1), the words "hereditary interest" must now be taken in their ordinary meaning of an interest acquired under the ordinary law applicable regulating inheritance, except so far as it may be altered by express enactment.

Bombay III of 1874 thus left to ordinary Hindu Law as modified by special custom, the devolution of watan property among Hindus, and daughters and daughters' sons, though of a different family, in the absence of special custom, would succeed to watan as to other property. That the Legislature contemplated this as the result of Bombay III of 1874, appears from the express legislation** by which it deemed it necessary to postpone males claiming through a female (who must necessarily be of another family) to males otherwise entitled.

** Bombay V of 1886, Section 2.

Under Bombay III of 1874, therefore, a daughter was, until Bombay V of 1886 became law, entitled, in default of unobstructed heirs and on the death of the widow to succeed, to divided watan in the absence of special custom excluding her.

The Courts have decided that there were no preferential heirs, that the property was divided, that there was no special custom excluding Sakubái, and declared her right to succeed.

At the time that the property passed into her ownership and possession therefore she was a Watandár, having an interest already actually acquired by descent, and Section 9 has therefore no application to her.

This appears to be in accordance with the view taken by Mr. Fulton†† as concurred in by

†† In his report No. 102 of 24th January 1888, paragraph 11.

* No. 11 of 24th February 1888. Government Resolution No. 2793, dated 3rd May 1888, Revenue Department.

the Honourable the Advocate General.*

Bombay V of 1886 cannot affect the case, the presumption being in the absence of express provision that enactments taking away or impairing vested rights acquired under existing laws, were not intended to have a retrospective operation.† *Leges et constitutiones futuris certum est dare formam negotiis, non ad facta præterità revocari; nisi nominatim et de præterito tempore et adhuc pendentibus negotiis cautum sit.*

† Maxwell on Interpretation of Statutes, 192.

Cod 1, 14, 7, Broome's Legal Maxims, 35, 5th Edition.

(L. R. No. 1840, dated 10th December 1890; *vide* G. R. No. 474, dated 20th January 1891.)

26. On the question whether one born only one month after the marriage of his mother with one G., could, for the purposes of inheritance, be regarded as the son of the said G., the mother having been formerly the wife of another man, J., the following opinion (No. 893, dated 1st June 1892) was recorded by the Remembrancer of Legal Affairs:—

"Ordinarily under Hindu Law a son born in wedlock is held legitimate though begotten before it[1]. Such a son was called Sahodha[2]. A presumption of legitimacy would also arise under Section 112 of the Evidence Act I of 1872.

(1) W. and B. 340, note (e). I. L. R. 1 I. A., 283, 293. S. C. 21 W. R., 358.

(2) Mayne's Hindu Law, Section 75.

"If R.'s mother and G. were Sudras, R. would succeed to G.'s rights, even as his illegitimate son,‡ provided that the intercourse was not adulterous and unlawful, in which case he could only claim maintenance and not inheritance.§

‡ W. and B. 72, 81, 82, 389, 415, 447. 13, M. I. A., 141. 1 M. H. C. R., 475. 7 M. I. A., 48, 50. Str. H. L., 65, 68. Mayne, Section 503.

§ 173 P. P. J., 1877. I. L. R., 2 B., 140. 2 Str. H. L., 68. I. L. R., 1 B. 9. 4 M. H. C. R., 204. Mayne H. L., Sections 408, 505. I. L. R., 1 M., 306.

"In the present instance it is not *stated* that the birth of R. took place before the dissolution of the marriage between R.'s mother and her former husband J., or so soon after as to make it impossible that he should have been the son of G. by intercourse other than adulterous.

"The presumption therefore is that R. was the son of G. and entitled to succeed him, and it is for those who dispute that right to sustain the onus of showing that R. was the offspring of bigamous or adulterous intercourse.

"It is impossible to venture an opinion as to the question of fact whether R. were the son of J. or of G. Whether R. was the offspring of intercourse which would disentitle him, under the case above cited, to anything beyond maintenance, would seem to depend on the interval between the dissolution of the first marriage and R.'s birth, and in case of doubt R. is entitled to the benefit of it."

(G. R. No. 5053, dated 17th June 1892.)

27. The following opinion of the Remembrancer of Legal Affairs (No. 1778, dated 23rd December 1892) was communicated to the Divisional Commissioners and the Collectors for information and guidance:—

"Assuming the facts to be as stated, *viz.*, that the deceased P. (a representative Watandár in the pátilki watan of U.) has left no kindred but her sister's daughter T., that the family is governed by Mahomedan law, and that there are no other claimants except one C., who claims as the adopted daughter of deceased, there does not seem to be any reason for doubt that T., the daughter of deceased's sister, should succeed, and would exclude the right of the Crown.

Macnaghten's Precedents of Mahomedan Inheritance, Chapter I. Case VI.

"Adoption confers no right of inheritance.

Macnaghten's Principles of Mahomedan Inheritance, Section 45.

"Sisters' children are included in the third class of distant kindred under Mahomedan law.

Macnaghten's Principles of Mahomedan Law, Section 56.

"It is only in default of the four classes of distant kindred and of persons acknowledged by the deceased as kinsmen, and in the absence of a will that the property will escheat to the Public Treasury, but this only when no individual has the slightest claim.'"

(G. R. No. 575, dated 20th January 1893.)

28. When there are two or more distinct taksims in connection with one hereditary office, the Watandárs belonging to the different taksims should be treated as Watandárs of the same watan for the purposes of Part II of the Watan Act. (G. R. No. 7220, dated 30th September 1897.)

29. A widow cannot sell (and, therefore, a purchaser cannot buy) more than what is owned by the widow. Sales of shares to co-sharers should be encouraged as tending to reduce the number of shares, but for a purchaser to acquire an absolute right in a share purchased from a childless widow, it would be necessary for all the reversioners (co-sharers) to assent to and join in the sale. (L. R. No. 1279, dated 1st October 1885; *vide* G. R. No. 8617, dated 24th idem; *vide* also G. R. No. 3418, dated 8th September 1868).

30. As regards the question whether the holder of a service inám land can be ousted from his occupancy and forced to take other land in exchange, because his service holding is required for a public purpose, as for instance reserved forest, it appears that the only way in which an exchange could be enforced would be by Government resuming the existing service holding and afterwards making a fresh grant. But there is no provision in the rules concerning the resumption of service holdings, that Government may resume them whenever the land comprised therein is required for any public purpose. Service lands have always been acquired, when necessary, under the Land Acquisition Act. (L. R. No. 505, dated 19th April 1886; *vide* G. R. No. 3685, dated 21st May 1886.)

31. Watans consist of (1) lands, (2) cash allowances, and (3) right of service. When watan land is required for a public purpose, it may be acquired, like any other land, either by agreement or, if necessary, under the Land Acquisition Act. Cash allowances may be dealt with by Government at

their pleasure, seeing that the Pensions Act protects them from suits in the Civil Courts in respect of such payments. In the case of an allowance enjoyed as remuneration for service, the payment would naturally be ordered to cease when the service is no longer performed or required by Government. For loss of the right of hereditary service, with the emoluments and advantages appertaining to it, a Watandár has a good claim to compensation, and if he is not satisfied with any terms Government may think fit to authorize the Collector to offer him, his claim will be entertainable by the Civil Courts. The Land Acquisition Act is not applicable to the acquisition of such rights. (L. R. No. 1635, dated 20th December 1886; *vide* G. R. No. 323, dated 14th January 1887.)

32. The will of a Hindu is, so far as it affects property, a deed of gift and takes effect to the same extent only as a gift of the property would be valid. Under Section 5 of the Hereditary Offices Act a gift of a watan is invalid without the sanction of Government.

The will in so far as it alienates the watan without the sanction of Government to a person who is not a Watandár of the same watan is invalid.

(L. R. No. 599, dated 12th May 1886; *vide* G. R. No. 4055, dated 7th June 1886.)

33. Section 5 of the Watan Act is to be given effect to when the alienation introduces no innovation in the original custom of the watan service and is not contrary to the provisions of the Act in other respects. (G. R. No. 6272, dated 3rd September 1886.)

34. The following opinion of the Remembrancer of Legal Affairs, No. 1262, dated 23rd November 1888, was circulated to the Collectors and Commissioners for information and guidance :—

"The question raised in the correspondence which accompanied Government Memorandum No. 5515, Revenue Department, dated 14th August 1888, is whether the Collector can under Section 11 of the Watan Act declare null and void an alienation which a Watandár was competent to make under Section 5 of the Act as amended by Bombay V of 1886.

"2. The facts are—

A Watandár mortgaged part of the watan property in 1878 for Rs. 300.

He offered to redeem.

The mortgagee refused to allow immediate redemption.

The Watandár complained to the Assistant Collector, Mr. Wiltshire, who under Section 11 of the Act ordered restoration of the property to the Watandár.

"3. On appeal the Collector considering the alienation valid under Section 5 of the Act as amended by Bombay V of 1886, as far as the life interest of the mortgagor was concerned, declined to act without the orders of Government.

"4. The Commissioner, S.D., thinks Section 11 empowers the Collector to protect only inalienable watans and that the Collector cannot declare null and void the alienation of an alienable interest.

"5. I doubt however whether the words 'therefore inalienable' in Section 10 of the Act would have the effect. They are not operative but only inserted as words to be used in the certificate, and it may be doubted if they apply to any words in that section but those with which they are coupled, *viz.*, 'assigned as the remuneration of an officiator.'

"6. Until the Act was amended by Bombay V of 1886, all the alienations mentioned in Section 10 were *ab initio* void, including unsanctioned alienations of unassigned watan to non-Watandárs.

"7. The Amending Act rendered alienations of the kind last mentioned valid for the life interest of the alienor, but it did not by express words take away the power of the Collector to declare such alienations null and void.

"8. This was probably an oversight. The point seems to have been noticed in the Rules* made under the Act which were amended by Government Resolution No. 2793, Revenue Department, of 3rd May 1888, paragraph 2, to suit the change in the law, the words 'an illegal transfer' being substituted for the words 'a transfer.'

* In line 8 of the Rule under Part II, Sections 10 and 11 (*vide* Compilation of General Rules, page 191).

"9. The consequence is that under the strict wording of the law the Collector would retain the power in the interests of Government to declare such an alienation null and void, while the Civil Courts could not refuse to enforce it as an alienation valid so far as the life interest of the alienor is concerned.

"10. The words the 'Collector shall' in Section 11 are no doubt imperative. But Government alone could insist on their being enforced.

The mortgagor would be estopped from taking advantage of his own wrong, and now that he has the title which he professed to mortgage, he has no legal or equitable right to demand the restoration of the land to himself without redemption.

"11. If, therefore, the Collector has the power under Section 11 to declare the alienations void, there is no reason why such power should be exercised in contravention of the rules framed by Government.

"12. But I think that Sections 10 and 11 of the Act, so far as they affect alienations of life interests in 'unassigned' watans, were repealed by implication under Bombay Act V of 1886.

For 'if the co-existence of two sets of provisions would be destructive of the objects for which they were passed, the earlier would be repealed by the latter.'

Maxwell on Interpretation of Statutes, page 145.

"13. I therefore think that the Collector should refuse to exercise any summary powers in this case. The mortgagor has his remedy in the Civil Courts, and apparently the mortgagee is now willing to allow redemption.

"14. I may note that Section 11 only enables the Collector to declare the alienation of the watan property null and void and does not annul the liability of the alienor to pay the debt."

(G. R. No. 8513, dated 20th December 1888.)

35. There can be no doubt from Sections 4 and 9 of Act III of 1874 that it was not intended that the latter section should ever be enforced to deprive a person of a holding acquired before the introduction of the British Government. Such a person by Section 4 is to be regarded as himself a Watandár, and Section 9 clearly refers only to transfers whose invalidity was due to their not having been effected

by virtue of a decree of a British Court or with the consent of a Collector.

I. L. R., 5 Bonbay, 435 ,, ,, ,, 437

Even before Bombay III of 1874, *wherever Regulation XVI of 1827 was in force*, an alienation of watan property was no doubt inoperative beyond the life time of the alienee.

It was therefore entirely consistent with the presumable intention of the Legislature that retroactive effect should be given to Section 9 in respect of all alienations made *where Regulation XVI of 1827 was in force*. For that section did not affect the substantive law, but only the procedure, and the presumption against a retrospective construction has no application to enactments which affect only the procedure.

Maxwell on Interpretation of Statutes, 199.

It is quite otherwise, however, when a retrospective construction would affect the validity of past transactions.

It is when the enactment would prejudicially affect vested rights, or the legal character of past Acts, that the presumption against a retrospective operation is strongest. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intened not to have a retrospective operation.

Maxwell on Interpretation of Statutes, 192.

Section 4, moreover, clearly indicates that the Legislature intended to regard as a Watandár any person actually holding watan property acquired by him before the introduction of the British Government.

(L. R. No. 828, dated 16th July 1889; *vide* G. R. No. 5620, dated 3rd August 1889.)

36. The following opinion (No. 997, dated 13th August 1889) was recorded by the Remembrancer of Legal Affairs on the question whether under general Hindu law the assent of heirs is essential to alienations by partition of estate :—

"It is a general principle of law that all co-parceners must be joined in a suit for partition, A son is not an heir, that term being misleading if applied to the case of a Hindu son's relation to his father. He is a co-parcener with a vested interest in the ancestral estate from his birth. He cannot dispute a partition made before his birth, but he is not necessarily bound by a suit for partition brought by his father's brothers against his father to which the son himself has not been made a party."

XII W. R., 256.
I. L. R., 7 Calc., 577.
VII B. H. C. R., 46.
W. and B., 735 (*d.*)

XI B. H. C. R., 72, 76, &c.

W. and B., 1229; and cases quoted.

I. L. R., 6 Mad., 284.

(G. R. No. 6728, dated 9th September 1889.)

37. A watan being an estate held from Government is subject to special rules both as to devolution

and as to the capacity for proprietorship. Government usually has bestowed it on a particular family with reference to the special fitness of that family on account of caste or social or political status for the performance of certain public services annexed as an obligation, though not as a condition, to the grant. Enjoyment by that family is thus an essential element of the tenure. This being so, the tenure fails on the entail, so to speak, being broken and the property passing into the possession of one not a member of the family of beneficiaries. This is recognized in an important Full Bench judgment of the Bombay High Court, reported at pages 198—232 of the Indian Law Reports, IX, Bombay Series. If then the original family of Watandárs have allowed themselves to be ousted so long or in such wise that they can no longer assert their right against the intruders, the result is not to destroy the latent ultimate right of the donor on terms as reversioner, *i.e.*, Government, but to bring the reversionary right into immediate operation. The ousted Watandárs if they have conspired with the intruders have been guilty of a fraud on the donor tending to the destruction of the residuary estate, which is recognised as a ground of forfeiture of the tenure. If they have been put out by force or fraud or the operation of any particular law, their estate has simply perished and that out of which it was carved (*viz.*, the estate of Government) becomes integral again. The intruders cannot as against Government take advantage either of the fraud or the negligence of the tenant Watandárs so as to destroy the higher estate of the sovereign except when the right of the latter is barred by limitation. Watan lands are also service lands and Government under general rules to that effect may resume them at discretion. (G. R. No. 6890, dated 13th September 1889.)

38. The question whether rent can be demanded from an alienee of watan land under Section 9, clause 2, without a declaration that the alienation is null and void, answers itself when the effect of such a declaration is considered. A declaration that an alienation of watan property is null and void does not invalidate or annul the whole transaction. It does not relieve the alienor from personal liability, but only affects the alienation of the watan property. When the alienation was prior to the act and the watan property consists of land it is lawful * for the Collector under Section 9, clause 2, to leave the alienee in possession of the land and to recover full rent from him. But in such case the rent is regarded as the profits. The Collector's procedure in such case necessarily has the effect, therefore, of annulling the alienation of the *profits*. The *transaction* does not require to be annulled. The recovery of the profits, *i.e.*, of the rent which shall be considered as the profits, operates as annulling the *alienation of the profits*, leaving the rest of the transaction un-

* For proper construction of the words "it shall be lawful" occurring in Section 9, clause 2, of Act III of 1874, *vide* G. R. No. 9198, dated 21st November 1895.

touched. The Collector has no power to do more than declare the alienation of the profits of the land alienated null and void, and his order for such recovery is an implied declaration that such alienation is null and void. There is in such a case no necessity or legal justification for any declaration beyond that, and if the declaration required to be expressed in words, it could merely declare that the alienation of the profits was null and void. The transaction is otherwise unaffected. The other incidents expressed or implied in the contract stand as they were before. Thus the liability for the debt and in case of a mortgage the equity of redemption or in case of a lease the limit of the term would be unchanged by the declaration. (L. R. No. 61, dated 13th January 1890; *vide* G. R. No. 947, dated 4th February 1890.)

39. The certificate to be sent by Collectors to the High Court under Section 10 of the Watan Act in cases of attachment of watan assigned under Section 23 as remuneration of an officiator should be in the following form. The certificate should in each case before signature by the Collector be sent to the Remembrancer of Legal Affairs for revision as the circumstances in each case may require.

Certificate under Section 10 of Bombay Act III of 1874.

I, Collector of hereby certify to Her Majesty's High Court of Judicature, Bombay, that the cash allowance hereinbelow described is watan property assigned under Section 23 of the Bombay Hereditary Offices Act, 1874, as remuneration of the officiating of Táluka . of the District, and is therefore inalienable and is not liable to process of any Civil Court.

The Second Class Subordinate Judge of having on the day of 18 at the instance of in darkhást No. of 18 in execution of the decree passed by the Honourable the Judges of Her Majesty's High Court of Judicature at Bombay in (?) Appeal No. * issued an order for the partition of the said cash allowance this certificate is, under Section 10 of the said Act, forwarded to the said Court at Bombay in order to the removal or setting aside in accordance with Section 13 of the said Act, of any attachment or process placed on, or of any sale of or affecting the said property or the profits thereof.

*(Names of Parties).

Property assigned as remuneration to the officiator :—

"One-half of the cash remuneration of Rs. 37 annually payable to the officiating from the Sub-Treasury."

Dated the day of 18 . } Collector of

(G. Rs. Nos. 6500, dated 13th September 1890, and 8443, dated 26th November 1890.)

PART III.—COMMUTATION OF WATANS.

1. Government are not at present disposed to enforce a non-service settlement against the wishes of the Watandárs, but in cases where they are not willing to accept it, service up to the full value of the watan should be exacted.

There is no legal difficulty in enforcing a settlement in respect to cash emoluments, and this can be done hereafter, if advisable, in cases where the cash allowances are sufficient to cover the amount representing the value of the service dispensed with. (G. R. No. 3045, dated 16th June 1874.*)

2. Ten years should be fixed as the period of settlements of haks to be made by panchâits under Section 18 of the Watan Act. (G. R. No. 34, dated 4th January 1876.)

3. The wording of Section 17† of the Watan Act excludes from its operation a case in which no payment in cash or kind is made and the remuneration consists of land alone. (G. R. No. 8190, dated 9th October 1885.)

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* In the Ratnágiri District the Collector was directed to enforce the non-service settlement on the basis of commutation of 5½ annas in the rupee. (G. R. No. 6260, dated 16th September 1887.)

† As regards the construction of Section 17, *vide* judgment of the Bombay High Court in Appeal No. 62 of 1893 printed as a foot-note to paragraph 8 of Part II of the Village Officers and Servants Section of the Compilation.

PART IV.—CREATION AND LAPSE OF WATANS.

1. It is inexpedient to create new watans in the Konkan, and the person who is appointed Patel should receive a cash remuneration. (G. R. No. 3270, dated 29th June 1878.)

2. The villages of the Panch Mahâls should be grouped in two classes, *viz.*, Class A, comprising the more settled areas and the larger villages, and Class B, comprising villages without organized communities and inhabited chiefly by Bhils or Kolis. In the villages under Class A, new watans should be created under Part IV of the Watan Act III of 1874, but in the smaller Bhil and Koli villages in which no watan rights exist, none should be created at present. (G. R. No. 2139, dated 22nd April 1879.)

3. Government do not think it desirable to acknowledge services of their officers by the grant of watans. (G. R. No. 5747, dated 3rd October 1881.)

4. Government would be prepared to grant service lands to Patels, the former Watandárs of deserted villages, in the Khándesh District on their repopulating them and bringing a certain area of land under cultivation, should the Commissioner see fit to make proposals to that effect. (G. R. No. 3294, dated 26th May 1887.)

5. Copies of the following letter from the Secretary to the Government of India, Department of Revenue and Agriculture, No. 215—348, dated 18th January 1895, were forwarded to the Commissioners and Collectors for information with an intimation that the order* of the Government of India, No. 56, dated 26th April 1841, quoted at page 122 of Nairne's Revenue Handbook, so far as it relates to hereditary village accountants, should be considered as cancelled :—

"I am directed to acknowledge the receipt of your letter No. 9948, dated 5th December 1894, enclosing correspondence on the subject of the recent grant to Ráo Sáheb Shesho Krishna, Mámlatdár, of certain kulkarni watans in the Bijápur District in which the hereditary rights, which had expired, were revived in his favour, and to forward for the information of the Governor in Council a copy of a letter, No. 2007, dated 22nd October 1894, recently addressed to the Government of Madras, which indicates the views of the Government of India regarding the maintenance of hereditary village accountants.

"2. As His Excellency in Council is aware, one of the main objections urged by the Government of Bombay against the em-

Paragraph 8 of letter No. 7070, dated 15th October 1891.

*Lapsed hereditary office may, with the sanction of Government, be bestowed on properly qualified public servants as rewards for meritorious service. (G. of I. No. 56, dated April 26, 1841.)

Summary accompanying Bombay Government's letter No. 5538, dated 7th July 1892.

ployment of their village accountants on survey and settlement work was the practical impossibility of training the hereditary kulkarnis. The Government of India, as at present advised, do not suggest any interference with existing hereditary rights; but they are strongly of opinion that such rights when once extinct should not ordinarily be revived.

"3. Circumstances have altered greatly since the order of the Government of India was passed upon which the rule* contained in Section 22 of Chapter VI of Mr. Nairne's Handbook for Revenue Officers is based, and I am to request that, if His Excellency in Council sees no objection, the rule so far as it relates to hereditary village accountants may now be formally abolished."

(G. R. No. 5053, dated 4th July 1895.)

* Lapsed hereditary office may, with the sanction of Government, be bestowed on properly qualified public servants as rewards for meritorious service. (G. of I. No. 56, dated April 26, 1841.)

PART V.—REMUNERATION OF OFFICIATORS.

1. In cases where the proprietor (*i.e.*, the person in possession) of service land is either unwilling to, or incapacitated from, performing village service, the Collector may require him to pay such rent over and above the fixed survey assessment as will suffice for the wages of a substitute. If the proprietor is unwilling to meet this demand, then the land should, as a general rule, be resumed.

The excess beyond the official emolument, levied under the above orders, which, in fact is nothing more than the legitimate rent, should not be credited to Government, but paid to the person who has a right to the occupancy of the service land, but is kept out of it by another who has possession.

(G. Rs. Nos. 2241, dated 20th June 1866, No. 2425, dated 4th July 1866, and No. 5976, dated 4th December 1872.)

2. It may be assumed that all land held by the patelki family in the Panch Mahâls was held for service, or in other words, the Patel took it by virtue of his office.

While the Panch Mahâls were under the Scindia, the revenue was farmed, a lump sum being paid by each village, and neither the Vahivatdár nor the Gwâlior Darbár cared how much or how little land the Patels had in their own possession, so long as a round sum was paid by the village.

When the district came into the British possession, village accounts were for the first time prepared, and the Talátis entered the land in the possession of the Patels according to their fancy, some entering the whole of the land enjoyed by the Patel bháyád as service, and some only the portion enjoyed by the officiators as service, and that held by the non-officiators as ját inám or jivái. In fact, there was no uniformity, and it would, therefore, be impossible to draw any distinction between the different descriptions of land *according to Government books*; for, as stated above, it was *all* enjoyed for what is now termed service.

This, added to the confusion in which the subject appears to have got involved, led Government to think that it would not be inequitable to order *de novo* that the whole of the land found in the possession of the Patel family is to be treated as service and made available for the remuneration of the Patels.

The above settlement applies to the whole of the Panch Mahâls except the Mevási villages.

(G. R. No. 239, dated 16th January 1878.*)

The lands of the Patels in the Panch Mahâls are very extensive, and not being "watans" can be

*A scheme for the remuneration of Patels and village police in the Kálol Táluka of the Panch Mahâls was sanctioned by Government Resolution No. 4835, dated 11th September 1879.

dealt with as Government please. The following proposal made by the Extra First Assistant Collector, Panch Mahâls, should be carried out, care being taken in so doing to bear in mind the provisos that (1) due margin should be left to provide for remuneration in the case of increased cultivation, and (2) the change should be made to press less hardly on the Patels and their families. This latter point may require that the balance of land left after the payment to the Patels and police should not be fully assessed.

"Some of the excess may often be made available for the remuneration of village police without taking assessment from the holders who would either themselves take the place of watchmen or arrange with men of the village for the performance of the duty. As the revenue of the district increases, so the remuneration of the revenue Patel according to scale would be greater. It would be well, therefore, to leave a margin on the statement according to the present figures.

"A quantity of land equal to the officiating Patel's free holding might be set apart for the remuneration of the village police and the residue be fully assessed. * * * The establishment of subordinate police servants in the villages should be made at the same time with the settlement of the Pátels' holdings, so that the additional *charges* to be met may be known at the same time with the new *recoveries* on account of excess service holdings."

(G. R. No. 3241, dated 27th June 1878.)

3. Bhâyâds' lands in the Panch Mahâls District should be recognised as ját inâms and excluded from consideration in the allotment of lands as remuneration for service. (G. R. No. 7298, dated 2nd December 1881.)

4. The following opinion (No. 383, dated 29th March 1882) was recorded by the Remembrancer of Legal Affairs on the subject of the application of the Watan Act to a patelki office which was not held in a particular family and the remuneration of which was paid by the Inâmdár:—

"The patelki office of the village of Dyamapur in the Dhârwâr District cannot, in my opinion, be treated as a stipendiary appointment under the provisions of Section 16 of the Land Revenue Code, the second portion of which section expressly saves the rights of Inâmdârs and others in respect of the appointment of Patels. Yet the office has been in existence ever since the introduction of British rule, and the Inâmdârs have always paid the remuneration of the office. In cases where the office is held by a particular family such payments are considered watan property attaching to the office. But in cases where the office is not held by any particular family, it does not follow that the office is not what is known as 'watan,' and that the payment of the emoluments is merely a stipend, or that the Inâmdár may abolish the office and withhold the remuneration whenever he chooses.

"2. It is true that the word 'watan' is defined in the Act to include watan property, the hereditary office, and the rights and privileges attached thereto, and that the Act only deals with offices which are held by Watandârs, that is, persons who have a hereditary interest in a watan; but there are undoubtedly watans the right to hold which does not exist in any particular family, and Government has power to deal with such under the provisions of Section 22 of the Act by appointing a particular person to perform the duties of the

office and enjoy the emoluments in consideration of such performance, or to assign the office and its emoluments as hereditary property to a particular family as Government may see fit. When there is a watan, but no Watandár, Government can appoint an officiator."

"3. When a patelki office has existed from a time anterior to ur orule and the officiator for the time being has all along been regularly paid, it may be difficult to ascertain the exact origin of the office; but to convert what is presumably a watan in its inception into a stipendiary appointment continuable only at the Inámdár's pleasure would be a retrograde course.

"4. Section 16 of the Land Revenue Code applies to Government villages and to those alienated villages where there is no such thing as a patelki office or any sort of remuneration for any such office, and where it may be considered desirable by Government that a stipendiary Patel should be appointed.

"5. In the present instance there is an office, presumably watan in its nature and origin with a payment attached to it, and the right of Government to appoint an officiator. All that is required is the power to make the Inámdárs continue the payments, and this power appears to me to be sufficiently afforded by the Bombay Hereditary Offices Act."

(G. R. No. 2552, dated 19th April 1882.)

5. The following opinion of the Remembrancer of Legal Affairs, No. 629, dated 14th May 1887, dealing with the question whether watan land for which judi has been imposed according to the rules for the payment of remuneration to officiating Watandárs in the case of patelki and kulkarni watans should be transferred to the officiating Watandárs, was communicated to all Collectors and Commissioners :—

"Subject to the provisions of the Watan Act and local custom the right of succession to watan property is governed by the ordinary law of inheritance.

"In the present case, Lala Chaudkhan held the field in dispute from 1858-59 to 1878-79.

After his death his son Guljar took possession and held it till 1882. The Assistant Collector then ejected him in favour of Edu, who had been appointed officiating Patel, on the ground that it should be presumed that the land had been assigned as remuneration for the officiator. The Collector reversed this order and restored Guljar.

"The Collector's order appears to be correct. The Assistant Collector's opinion that it should be presumed that the right to the possession of land had been assigned as official remuneration is, I think, erroneous. The presumption is the other way. The ordinary law of inheritance from the last possessor prevails until the circumstances which require some other order of descent are proved. There is really no proof that this land was assigned as official remuneration. Such assignment could only be the result of a specific order or of general custom. As it is not suggested that the Government records show any trace of an official order about this land, it may safely be assumed that none has ever been passed. And as regards custom, there is no proof that by it the land has been reserved for the officiator. It is true that Lala and Guljar held from 1858 to 1882 and that at the same time they successively officiated as Patels, but these facts are quite insufficient to establish the custom. To do so it would be necessary to show that for a very long series of years the possession of this land always went with the office irrespective of the ordinary law of descent, and that the existence of the custom was generally admitted by the family.

"I do not think the imposition of extra judi on the land to make up the scale remuneration to the officiator and the grant to the latter of a stipend in cash from the treasury affect in any way the right to possession of the land. Though the extra judi is indirectly paid to the officiator, the very most that can be said is that its imposition may amount to an assignment of part of the profits as official remuneration; but it cannot, in my opinion, be held to be an assignment of the land itself."

(G. Rs. No. 3774, dated 22nd June 1887, No. 6922, dated 14th September 1889, and No. 1284, dated 16th February 1897.)

6. It is no part of the duty of an officer settling a watan register to fix the emoluments of the officiators in the watan. Where no land is assigned for the remuneration of the officiators and the representative Watandárs serve contemporaneously and perform similar duties, it is equitable to divide the cash allowance assigned to the watan equally between the officiators. (G. R. No. 8141, dated 26th October 1889.)

PART VI.—REPRESENTATIVE WATANDÁRS.

1. In cases of dispute as to the right to serve, the general rule should be that if the actual performance of service is not disputed, it should rest with the opposite party to prove that such service was on the part of others and not of original right, if they allege such to be the case; if they fail to prove this, the claimant should have the benefit of the doubt. (G. R. No. 4797, dated 23rd August 1875.)

2. Section 26 of Bombay Act III of 1874 enacts that in determining what heads of families shall be recognised as representative Watandárs, and what is the custom of the watan as to service, the Collector shall consider the practice heretofore observed from the earliest period for which there are records *or other evidence* available. A final decree of a competent Court determining the rights of the Watandárs *inter se*, and the custom of their watan as to service, would appear to be *evidence* of the nature contemplated by this section, and it ought to be regarded by the Collector, as it would be by any other authority, as *conclusive* on the points with which it deals.

The rules laid down in Part VI for determining who shall be recognised as representative Watandárs, are however to some extent new, and should any of them operate to limit or vary a right of which the existence has been declared by a Court's decree upon different grounds, the Collector will be bound to enforce the new law, and to treat the Court's judgment as conclusive only with respect to such *facts* as are material to a correct determination under the Act of the right to be recognised as a "Representative Watandár."

(L. R. No. 178, dated 8th March 1875; *vide* G. R. No. 1711, dated 17th idem.)

3. Wherever a Court of competent jurisdiction has investigated and adjudicated upon the rights of the members of a Watandár family *inter se*, or the custom of a watan as to service, the Collector should treat the judgment of the Court as evidence under Section 26 of Bombay Act III of 1874, and not go behind it, unless he be satisfied that all the parties interested were not before the Court, or that there was, from any other cause, a miscarriage of justice. In any case, the Collector should treat the judgment of the Court as *primâ facie* evidence, and abide by it until it is satisfactorily impeached. Of course, if the judgment of the Court is at variance in any respect with the rules laid down in Part VI of the Act as to who are to be recognised as representative Watandárs, the Collector must follow the directions of the Act, and adopt the judgment of the Court only so far as it establishes facts material to enable him to come to a determination.

(Adv. Gen. No. 14, dated 26th February 1876; *vide* G. R. No. 1711, dated 17th March 1876.)

4. For the purposes of Act III of 1874, in all such cases as that noted in the margin the existing head of the family of the second son should be registered as the representative Watandár under Section 27 and also entered in column 20 of the watan register.

Some generations back a man had two sons, on the second of whom, for some reason or other, the service watan devolved. On his death his son succeeded and so on in succession through each generation. The eldest son of the original head of the family and his descendants never had any connection with the watan.

It is not intended, however, that proof of appointment under Act XI of 1843 is necessary to give a Watandár a claim to officiate. What is meant is that when, for some reason or other, the elder branch of a family had *never* had any connection with the watan, the existing head of the family of the second son who had been connected with the watan should be registered as the representative.

(G. Rs. Nos. 2906, dated 15th May 1876, 3484 dated 14th June 1876, and 3809, dated 30th idem.)

5. In a watan in which there were two taksíms (A and B) it had been the custom for one member of each taksím to officiate contemporaneously. In one taksím (B) there was but one family and a member of it had always officiated for life, but in the other (A) there were three families a member of each of which had officiated in fixed successive periods. As the service of one member of each taksím was contemporaneous, the question was raised whether the Collector was bound under Clause 3, Section 38, of the Watan Act to hold that the rotation of each of the three 'representative Watandárs' in the latter taksím must in future be for life or whether he could fix the period of their rotation at his discretion. The point was also raised whether in the case of the latter taksím the heads of the three families had the right to come to an agreement amongst themselves as to the order of service or whether the privilege allowed by Section 31 was strictly confined to cases described in Section 29. On these points the following orders were passed by Government:—

> Contemporaneous service means service so performed in the same taksím and the service in watan A has not been contemporaneous but successive, as only one man has officiated at a time. The watan settlement would be—
>
> Watan B—One officiator permanently for life.
>
> Watan A—One officiator in rotation out of three families for terms of not less than ten years in case of Patels or five in case of Kulkarnis, or for life, according to whether the case fell under Section 28 or Section 29 modified by agreement under Section 31.

(G. R. No. 3262, dated 2nd June 1876.)*

* The following opinion was recorded by the Legal Remembrancer in his report No. 438, dated 3rd May 1876, on the points disposed of by this Resolution:—

6. Under Section 26 of the Watan Act the Collector is bound to consider what has hitherto been the custom of a watan as to service, and if he is of opinion that one house has hitherto served oftener or for longer periods than another, it will be his duty to confirm that custom when preparing a new register. Service according to proportionate value of shares of watans should, however, be avoided as much as possible, as tending to complicate the preparation of registers. (G. R. No. 4987, dated 31st August 1876.)

7. Watandár, as defined in Section 4 of the Watan Act, includes "a person adopted by the owner of a watan or part of a watan" subject to Sections 33—35. Section 33 appears to have been intended to enact that if any Watandár who is or was head of a family or chief representative of a branch of a Watandár family (or his widow) has adopted an heir before the Act came into force, notice of such adoption must be given to the Collector within 12 months of the Act coming into force, and if this is done, the adoption is conditionally recognised, and the right of the heir to be registered is admitted as if he had been a born son of his father

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"5. * * The case put is one of a watan in which the service may be said to be partly contemporaneous and partly in successive periods. Section 28 applies where the service has been *either* contemporaneous *or* in successive periods, and Sections 29—31 apply only to cases in which the service has been in successive periods. The case stated in the question appears to be a *casus omissus*, and Section 38 therefore does not expressly provide for it. But there is no difficulty in seeing how it should be dealt with, and as Section 82 empowers Government 'to frame rules not inconsistent with the Act for the guidance of its officers in cases not expressly provided for,' I would suggest that the following rule be passed (namely) :—

'When it has been the custom, for a member of each of two or more taksíms to serve contemporaneously, and in one or more of such taksíms a member of each of several families has performed the duteis in successive periods, the custom as to contemporaneous service shall, subject to the provisions of Section 43, be recognised, and the rights of the representative Watandár, or of the representative Watandárs of each taksím as to service shall be determined under the provisions of the Act as if each such taksim constituted a distinct watan.'

According to this rule, in the case stated in the question, Section 27 would apply to the sole representative Watandár in the former taksim, and according to clause 2, Section 31, the period of his service would be for life; and Sections 28—31 would apply to the three representative Watandárs in the latter taksim and their period of service would either be for life or in successive periods according to the section under which their case fell. The rule would thus be not only 'not inconsistent with the Act' but also, I think, entirely in accordance with its spirit and intention.

"6. * * I am of opinion that Section 31 applies only to the cases described in Section 29 and that the three heads of families have only the right to determine the order of service amongst themselves, if the practice of service in successive periods is not proved to the Collector's satisfaction to have existed at the date of the introduction of Act XI of 1843, or if the practice of selection by the Collector from several families prevails. If the case falls under Section 28 (and apparently also if it falls under Section 30, although it is not expressly so stated) the Collector is 'to decide the order in which the representative Watandárs shall officiate,' but I presume that there would be no objection to his consulting the wishes of the representative Watandárs themselves on this point, and in fact this would no doubt generally be the preferable course."

by adoption. (G. R. No. 5559, dated 24th September 1881.)

8. The old rules published at pages 32 to 35 of the Circular Orders of the Revenue Department regarding the grant of permission to non-representative Watandárs to adopt and the levy of nazarána in case of adoption should not be regarded as having the force of law. The policy of Government in the matter of adoptions by service Watandárs being decidedly more liberal than before under the provisions of the Watan Act, it would seem absurd to restrict in the case of non-representative Watandárs a privilege which has been conceded to representative Watandárs. If the restriction is unnecessary in the case of representative, it is more so in the case of non-representative Watandárs. (G. R. No. 1001, dated 2nd February 1885.)

9. The Watan Act does not recognise either seniority or juniority as conveying or denying a qualification to registration as a representative Watandár and nothing is more common as a custom than for the junior branch of a family to retain all the rights of service to the exclusion of the elder branch. (G. R. No. 4007, dated 21st June 1882.)

10. It does not appear, looking to Section 26 of the Hereditary Offices Act, that the Collector's inquiry into the past custom of a watan as to service should be restricted to the period of British rule. (L. R., No. 552, dated 18th April 1884; *vide* G. R. No. 3737, dated 9th May 1884.)

11. A sole surviving male representative of a Patel Watandár family gave notice under Section 34 of Bombay Act III, 1874, of adoption of an heir selected by his daughters-in-law. Strictly speaking, the terms of Section 34 of the Hereditary Offices Act are not applicable to the circumstances of the case, because the adoption has not been made by a registered representative Watandár or his widow. But the adoption has been made by the widows of the deceased son of the representative Watandár with his approval, and the adopted son becomes by virtue of the adoption the heir of the present representative Watandár in preference to the widows who have adopted him, and if he survives him, will be entitled, under Section 36, to be registerd as representative Watandár in his stead. In these circumstances the Collector should register the name of the adoptive boy as heir, on the ground that the provisions of the Act have been as nearly complied with as was possible. Section 34 of the Act requires that the name of an adopted child should be registered by the Collector as heir merely. If notice of the adoption is made at a time when the adoptee is by virtue of his adoption at once entitled to be registered as representative Watandár, he should be so registered also; but otherwise his registration as representative Watandár will take place, under Section 36, only on the death of the existing representative Watandár. (L. R. No. 901, dated 4th July 1884; *vide* G. R. No. 5846, dated 19th idem.)

12. The words of Section 35 of the Hereditary Offices Act clearly prohibit the Collector from recognising any adoption of which notice has not been given as provided in Section 33 or 34, unless upon production of a certificate of heirship or of a decree of a competent Court establishing the validity of such adoption. Where there are or are likely to be disputes amongst the Watandárs themselves, either as to the fact or as to the validity of an alleged adoption, this provision should be strictly enforced. But if the question affects nobody but the alleged adoptee and the Government, it is competent to Government, if they think fit, to dispense with the necessity for a strict compliance with the law, and when the adoption was made with the Collector's sanction and notice of it was not given under Section 33 through oversight merely, there would be good reason for not insisting upon the observance of the letter of the law. On the other hand, if there is no dispute amongst the Watandárs as to the adoptee's claim, he will have no difficulty in obtaining a certificate of heirship in the District Court. Some trouble and some expense are all that it will involve. (L. R., No. 933, dated 12th July 1884; *vide* G. R. No. 6102, dated 30th idem.)

13. It has been held that in Bengal a Hindu lad who has attained the years of discretion may adopt or give authority to adopt, and that a boy of 15 has attained the age of discretion. (Section 15, W. R. 548, and I. L. R., 1 Cal., 289.)

The question is considered in West and Bühler's Hindu Law, pages 905 (*d*) and 947-8, with the result of showing that no precise time is fixed by the shástras when a male may adopt and that a minor is not generally incompetent to adopt.

When a widow adopts with the consent of her husband, the material point is *not* what is her age at the time she adopts, but whether her husband was of sufficient age to be competent to authorize her to adopt. Consequently it is stated that a "widow, who is duly authorized by her husband, may adopt while she is a minor, because the act is her husband's and she is only the instrument.' (Mayne's Hindu Law, 4th Edition, paragraph 105.)

But in Western India no consent on the part of the husband is required for the validity of an adoption by a widow; so that the age of the deceased husband is in this Presidency immaterial. Steele in his Law and Customs of Hindu Castes (page 48) says, on the authority of Bhálchandra Shástri, that "a widow cannot adopt while under puberty," but there is no decision to this effect, and the law as to the age at which a Hindu widow may adopt must be regarded as being unsettled.

There is, however, no ground for holding that a widow of the age of 15 or 16 is incompetent to adopt, and for the purposes of Section 34 of the Hereditary Offices Act the Collector should recog-

nise such an adoption, if there is no other objection to his doing so. (L. R. No. 1988, dated 7th December 1891; *vide* G. R. No. 8851, dated 22nd idem.)

14. The following opinion of the Remembrancer of Legal Affairs, No. 8, dated 3rd January 1885, was circulated to Collectors and Commissioners with the remark, as regards paragraph 3 of it, that the Governor in Council doubts the necessity for any formal rules, that cases of the nature in question are very rare, and a Collector may be trusted to exercise his own discretion in dealing with them, proceeding in the manner mentioned in paragraph 4, and that if any person whose claim is rejected is dissatisfied, he will naturally appeal to the Commissioner and to Government, and the propriety of the Collector's decision can then be considered :—

"The provisions of Section 36 of the Hereditary Offices Act prescribe the course which is to be observed by the Collector ordinarily, *i.e.* when there are heirs of a deceased representative Watandár, and the only question is which of them is entitled to be recognised as representative Watandár in the place of the deceased. For the uncommon case of there being no person in whom the right of inheritance appears to the Collector to vest, the section makes no provision; but in such a case the Collector, as the representative of Government, is clearly entitled to refuse to recognise any claim which he deems to be unfounded and to treat the watan or the share of the deceased representative Watandár as lapsed.

"2. Section 22 of the Act shows that it was contemplated by the Legislature that watans or parts of watans will occasionally lapse to Government, and it cannot have been intended that under Section 36 the Collector should be compelled to recognise the claim of a person to succeed as heir merely because he produces a certificate of heirship notwithstanding that the Collector may have good reason for questioning his title. A certificate of heirship is granted under Regulation VIII of 1827 upon a very summary inquiry and frequently *ex parte*. The Civil Courts themselves do not regard the orders passed in such inquiries as final; the person to whom a certificate is granted is merely held to be *primâ facie* heir.

"3. In every case, therefore in which the Collector considers that there is no person entitled to succeed to a watan or share of a watan, he is justified, I think, in declaring such watan or share of a watan lapsed. This declaration may be made by him as soon as his inquiries satisfy him on the point, but whether he should arrive at a conclusion and declare a lapse of his own authority or after reference to the Commissioner or to Government is an administrative detail as to which it is open to Government to prescribe such rules as they think fit.

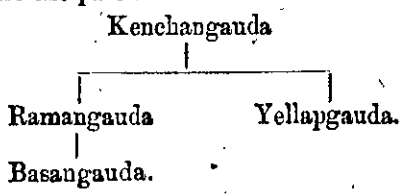
"4. The declaration of a lapse and the appropriation of the watan or portion of a watan to which such declaration applies as the property of Government, will involve Government in liability to a civil suit at the instance of any person who deems himself entitled to succeed to the property as heir of the deceased, and there is no bar to such a suit except the twelve years' limitation rule. If therefore a person comes forward within the above period and lays claim to the property, his claim ought not to be set aside because he did not appear sooner or because the watan or portion of a watan has already been treated as a lapse, but his claim ought to be enquired into as that of a person who may hereafter sue Government in the Civil Courts, and if he has obtained a certificate of heirship that fact should be regarded as indicating that he has some evidence in support of his claim. Whether any such claim should be finally resisted or admitted depends, of course, upon the merits of each case. There is nothing

in the Hereditary Officers Act that prevents its being admitted and the claimant's name being registered under Section 36 at any time."

(G. R. No. 531, dated 19th January 1885.)

15. The following opinion of the Remembrancer of Legal Affairs (No. 20, dated 5th January 1885) was communicated to the Divisional Commissioners :—

"In this case the parties are related as follows :—



Ramangauda is living, and as he is the eldest son of the deceased Kenchangauda there is no question that, under ordinary circumstances, he should be recognised as the representative Watandár and that he would be succeeded, on his death, by his son Basangauda.

"2. But it seems that Yellapgauda, the second son of Kenchangauda, is a man of superior intelligence, and that Ramangauda, who is rather the reverse, consented twenty years ago to the *khâta* being entered in his name and has never since taken any personal part or interest in the watan affairs.

"3. In 1870, a watan register was prepared under the departmental orders of Government by the First Assistant Collector and the right of service was entered in Yellapgauda's sole name. In 1875, this same entry was confirmed under the Hereditary Offices Act. Now (June 1884) for the first time Ramangauda's son, Basangauda, has applied that either his father or he may be declared representative Watandár in preference to Yellapgauda.

"4. I do not think that Government should as a rule revise orders under Section 79 of the Hereditary Offices Act which have been so long in force as has the one here in question. Basangauda's age is not stated in the proceedings, but if he has only recently attained his majority, there is a good reason for the delay which has occurred, and on the other hand it would have been unsafe for him to wait till his father's or Yellapgauda's death before making any representation to Government for fear that his silence might be construed into tacit acquiescence.

"5. The entry of the watan in Yellapgauda's name twenty years ago was made with Ramangauda's consent. He and Yellapgauda and a third brother came to this arrangement when they were still living as unseparated brethren, by mutual consent. This was a family arrangement with which Government will probably not think it desirable that there should be any interference, especially as Yellapgauda was evidently the most fit person to hold office; and there is here an additional reason for Government declining to deal with the case under Section 79 of the Act.

"6. Moreover, it is Ramangauda and not his son who is entitled under the Act to be representative Watandár. So long, therefore, as Ramangauda is alive, Basangauda has no claim to have his name entered in the record. For all these reasons I would recommend that Basangauda's application be refused.

"7. But a father cannot by Hindu law will away his son's interest in the ancestral estate. On the death of Ramangauda, therefore, Basangauda will have a legitimate claim to the entry of his name as representative Watandár, inasmuch as Yellapgauda's name stands only through the acquiescence of Ramangauda, and Yellapgauda's title will, therefore, cease on Ramangauda's death. Or if Yellapgauda should prede-

cease Ramangauda, and the latter is then still unwilling that the entry should be in his name, Basangauda and not any son or heir of Yellapgauda will be entitled to be representative Watandár.

"8. I have written thus far under the supposition that the watan is still the common property of Ramangauda and Yellapgauda. The Collector states, however, that the two brothers separated in 1877. If this means that there was a partition of the family property and if in such partition the watan fell entirely and exclusively to Yellapgauda, then, of course, neither Ramangauda nor his son Basangauda has any longer any interest in the watan, which must henceforward be regárded by the Collector as vesting in Yellapgauda's branch of the family only. But if the separation was merely a separation in house and food, without any formal partition, what I have above written holds good."

(G. R. No. 692, dated 23rd January 1885).

16. The register cannot be said to be *completed* until appeals from the decision of the officer who passed it have been heard.

As the decision of the original Court is not final until the period of appeal is over and as the appellate authority can confirm, modify or set aside the decision of the Original Court, it is perfectly competent to an Appellate Court to enter the names of representative Watandárs by the mutual agreement of the sharers under Section 31 of the Watan Act.

(G. Rs. Nos. 7744, dated 25th September 1885, and 8107, dated 5th December 1888.)

17. Watandárs of watans already settled should not be called upon to lodge genealogical trees in Government records. (G. R. No. 8690, dated 28th December 1888.)

18. It is an error to suppose that sanction is necessary to an adoption. It is sufficient to refer to Indian Law Reports, 1 Bombay, 607. Section 35 of the Bombay Hereditary Offices Act only requires the Collector to withhold his recognition of an adoption unsupported by decree or certificate if notice thereof has not been promptly given, *i. e.*, within twelve months if it took place before the Act, and within three months if after. If notice be given in time, the Collector is bound to register it. (L. R. No. 354, dated 3rd April 1889; *vide* G. R. No. 3090, dated 27th idem.)

19. The words "several families" as used in Section 28 do not necessarily mean families descended from *different* ancestors. (G. R. No. 5399, dated 27th July 1889.)

20. The following opinion of the Honourable the Advocate General, No. 74, dated 17th September 1895, in which Government concurred, was communicated to the Commissioners of Divisions for information:—

"With reference to memorandum No. 6787 of the Revenue Department, dated 4th September 1895, requesting my opinion whether having regard to the provisions, scope and intention of Bombay Act III of 1874, a deity or idol may legally be registered as a representative Watandár, I am of opinion as follows.

"I think that it is clear from the whole of the Act that a representative Watandár must be a person capable (apart from cases of unfitness such as are mentioned in Sections 45 and 46) of performing the duties of the office appertaining to the watan. Special provision is made for the performance of those duties in the case of a representative Watandár who is a minor (Section 37) or who is a female (Section 51). In the absence of any provision for the case of a deity or idol, I think that the legal fiction by which an idol is in a limited sense regarded as a kind of human entity cannot avail to contravene the plain intention of the Act as above stated. In as much therefore as a deity or idol is, even if regarded as a personality, incapable of performing any duties, it is not in my opinion legal to register such a personality as a representative Watandár."

(G. R., No. 7693, dated 5th October 1895.)

21. The last sentence of Section 36 relates only to the proceedings of registering the name of the heir; and if a certificate of heirship or a decree is then produced, the Collector must act on it; but the Collector is not bound to alter the register years after it has been framed, because a certificate of heirship or decree affecting private property is produced, and has not power to alter it at all on that account, although, if a Court distinctly decreed that a person not registered was heir to watan rights, Government would no doubt be moved to direct a new inquiry after calling for the papers.

Whenever a decision under Section 36 of the Act appears, owing to the subsequent production of a certificate of heirship or for any other cause, to be erroneous, Government will be prepared, on due cause shown, to take action under Section 79 of the Act.

(G. R. No. 7063, dated 4th November 1898.)

22. The following opinion of the Remembrancer of Legal Affairs, No. 1058, dated 31st August 1895, was communicated to the Commissioners of Divisions for information :—

"The family owning the watan in question was formerly a joint family consisting of three brothers, Ganu, Dongar and Rágho. Ganu's name was entered as that of the representative Watandár of the watan. When he died, Dongar's name was entered. When Dongar died, Rágho applied to have his name entered, but died before orders were passed. The Assistant Collector eventually ordered that the name of Bhima, widow of the second brother, Dongar, should be entered. Lakhsmibái, widow of the eldest brother, Ganu, appealed to the Collector. The widow of the third brother, Rágho, made no claim. The Collector reversed the Assistant Collector's decision, and ordered that the name of Lakshmibái, widow of the eldest brother, Ganu, should be entered. Bhima now in turn appeals to the Commissioner. The Commissioner on the authority of Government Resolution in the Revenue Department, No. 7192 of 5th September 1885,—which rules that a decision in appeal should proceed only on the points raised in the appeal—refrains from dealing with the appeal, and refers the matter to Government. He is of opinion that the name of the widow of the third brother, Rágho, should be entered. He points out that Rágho's name should have been entered when Dongar died. The fact of Rágho's having died before the enquiry with a view to the entry of a new name was complete, does not take away his right. His widow is his nearest heir. Her name should therefore be entered. Her failure to apply does not affect

the question, for the terms of Section 36 of the Act are imperative.

"I think this view is correct. The law governing the rights of the individuals concerned appears to be this. The widow of the last deceased brother takes the estate. The widows of the other brothers are entitled to maintenance only (West and Bühler, pages 345-6 and 400-1). Rágho's widow is, in the language of Section 36, the nearest heir to the family property, the watan included, and her name must be entered as sole representative Watandár. It makes no difference that she has not put forward her claim. The law does not require an heir to do so. By Section 36 of the Act the village officers are to report the death of a representative Watandár, and the Collector is bound then, if satisfied that the report of the death is true, to enter the name of the person appearing to be the deceased's nearest heir. Nor does the fact that Rágho's application was not disposed of before his death, affect the question. His name should have been entered whether he applied or not. But taking matters as they stand, Rágho's widow is nearest heir to Dongar as sole heir to her deceased husband who was heir to Dongar.

"The procedure contemplated by Section 36 appears to be very summary. Enquiry beyond the contents of the village officer's report is not obligatory. But any one aggrieved by an order under the section has his remedy by application to the Civil Court for a certificate, or a suit in the same for declaration of heirship."

(G. R. No. 7371, dated 25th September 1895.)

23. The following opinion (No. 295, dated 26th February 1897) recorded by the Remembrancer of Legal Affairs on the question whether the female relations of a daughter should be postponed to her father's male relations in the order of the succession to the watan entered in her name before Act V of 1886 came into force, was communicated to the Divisional Commissioners and the Collectors in the Presidency proper :—

"The question proposed for opinion in Government memorandum No. 9073, Revenue Department, of 16th November last, arises under Section 2 of Act V of 1886, amending the Bombay Hereditary Offices Act III of 1874.

"One Vithalpant appears to have been the original Watandár. He died, leaving two sons Shidrampant and Devjipant, and hitherto the watan has been in the possession of the heirs of Shidrampant.

"Shidrampant's great-grandson died in 1874, leaving a widow named Umábái, who died in 1881 and a daughter named Vithábái.

"The watan was registered in the name of Vithábái under Act III of 1874, and continued to be so till her death in 1893. Vithábái's only son Dhondbhat died in 1892 (a year before his mother), leaving behind him a widow named Lakshmibái.

"The Collector has registered the watan in the name of Lakshmibái, but her claim is contested by one Dattátraya, the great-grandson of Devjipant, the second son of the original Watandár, under Section 2 of Act V of 1886.

"There is no doubt that this Act applies to the case under discussion, as Vithábái died long after it came into operation The question therefore proposed by the Commissioner is 'should Lakshmibái be postponed to a male member of Vithábái's father's family under the said section.'

"Vithábái obtained an absolute estate in the watan as inheriting the same from her father and under the law laid down in the Full Bench decision in *Bhágirthibái* vs. *Káhunjiráo* (I. L. R., 11 Bom., 285), the estate would have passed to her own heirs and not to those of the preceding owner if the gene-

ral Hindu law was to be applied. The same principle would have applied in the case of a watan devolving on the heirs of Vithábái, if the devolution had taken place before Act V of 1886 came into force. Lakshmibái would then have been the rightful heir to the watan.

"The operation of this Act, however, seems to postpone her claim to the devolution of the watan, and the statute creates a disability which did not formerly exist under the general Hindu law.

"Lakshmibái's husband having predeceased Vithábái she does not inherit this watan in terms of the first part of the section as 'the widow of the last male owner,' but she comes under the second part and 'claims through a female,' *i.e.*, Vithábái. The section is imperative, that 'every person claiming through a female shall be postponed in the order of succession to any watan to every male member of the family *qualified* to inherit such watan.'

"The words 'claiming through' have been interpreted by the Honourable the Advocate General in his No. 11 of 24th February 1888 (quoted in paragraph 1 of Government Resolution No. 2793 of 3rd May 1888) to apply not to immediate succession, such as that of a son to his mother, but only to mediate succession, such as that of a grandson to his maternal grandfather. Lakshmibái's case falls under the latter clause and she must be held to be claiming through a female, *i.e.*, Vithábái.

"It then remains to ascertain whether the appellant Dattátraya comes within the requirements mentioned in the last paragraph of Section 2, *i.e.*, if he is a male member of the family qualified to inherit such watan.

"The word 'family' has been defined by Section 4 of Act III of 1874, and it 'includes each of the branches of the family descended from an original Watandár.' Looking to this definition Dattátraya is a male member of the family qualified to inherit such watan.

"Under these circumstances it is submitted that the answer to the Commissioner's question should be in the affirmative, that Dattátraya has a prior claim, and Lakshmibái's right will have to be postponed to his right."

(G. R. No. 2770, dated 8th April 1897.)

PART VII.—PERIODS OF SERVICE.

1. The words "if contemporaneous" in clause 3, Section 38 * of the Watan Act, 1874, refer to the future not to the past, *i.e.*, when two persons are to serve contemporaneously (there being no others) each is to be appointed for life, and in all cases where service is to be in successive periods or in other words by rotation the periods of service is left entirely to the discretion of the Collector. No other construction is permissible or ever possible. (L. R. No. 1374, dated 4th November 1879; *vide* G. R. No. 6078, dated 12th idem.)

2. From the terms of Section 41 of the Hereditary Offices Act it does not appear that the provision contained in Section 53 is applicable to cases dealt with under Section 40. (G. R. No. 1827, dated 26th February 1896.)

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* Section 38 of Act III of 1874 has been since amended by Act V of 1886.

PART VIII.—OFFICIATING WATANDA'RS AND DEPUTIES.

1. It should be the general rule that Inámdárs have no right of nominating hereditary village officers. All Government Resolutions on this point issued prior to the passing of the Watan Act, 1874, must be considered cancelled where they conflict with the Act. (G. R. No. 4165, dated 23rd July 1875.)

2. Bombay Act III of 1874 is now the law of the land, and must be obeyed in inám as well as khálsa villages. Where Inámdárs have had the privilege of appointing, they should, when a nomination has to be made, be allowed to be present, and their wishes should, as far as the law allows, be treated with consideration. (G. R. No. 5522, dated 29th September 1875.)

Whenever an appointment of a village officer is made in an inám village, the Inámdár or his agent should be given notice and his objections, if any, to any person whom it is proposed to appoint should be fully considered before the appointment is made. The person to be appointed should be required to sign an undertaking to use all diligence to collect the dues of the Inámdár. (G. R. No. 5733, dated 17th August 1899.)

3. Local officers should reduce the number of officiators on every possible occasion where their services are not actually required. In most cases they will be able to arrange this, if they use tact, by carrying out the provisions of Section 31 of Act III of 1874, which can be applied, with the consent of the Watandárs, specially to such cases as those coming under Section 29 of the Act. The disposal of these cases is left to the local officers. (G. R. No. 6648, dated 27th November 1875.)

4. The repeal of Act XI of 1843 by Bombay Act III of 1874 has not the effect of cancelling from the date on which the latter Act came into operation all appointments lawfully made under the former Act, the periods of which had not yet expired. (L. R. No. 54, dated 17th January 1876; *vide* G. R. No. 515, dated 24th idem.)

5. The principle adopted by Mr. Vidal in the settlement of the Wái Kulkarni watan as shown in the following extract from the memorandum of the Revenue Commissioner, S. D., No. 897, dated 17th March 1876, should be applied in the settlement of other watans similarly situated:—

"In the Sátára Collectorate the Collector Mr. Arthur ordered on the authority marginally noted the entry in the register of the names of all sharers whose names appeared in the Government Records of 1853. The consequence of this has been, as shown in the present case, that 50 sharers and sub-sharers have been retained in the register.

G. R. No. 4465, dated 2nd August 1853, published at page 284 of the Revenue Circular Order Book of 1860.

"The undersigned fully concurs in the proposals of Mr. Vidal that heads of families which have enjoyed the right of service, should alone be entered in the register agreeably to the new Watan Act; and therefore recommends that the sanction of Government to the amendment of the register to this extent should be granted agreeably to Section 73, clause 2, of the Act.

"Sanction is also solicited to revise other registers of a similar nature on the same principle."

(G. R. No. 1957, dated 27th March 1876.)

6. Voluntary settlements under Section 31 of Act III of 1874 should be encouraged. The fact of a family never having done service before does not necessarily prevent its head being recognised under the Act as representative Watandár. (G. Rs. Nos. 2836, dated 11th May 1876, and 5855, dated 13th October 1876.)

A sole representative Watandár who is the only surviving Watandár of his own taksím, and who notwithstanding that there were several Watandárs living belonging to the other taksims of the watan, has always been allowed, before Act III of 1874 was passed, to appoint a stranger as his deputy, is now bound under Section 53 of the Act to appoint one of these latter Watandárs if there be one of them fit and willing to serve.

(L. R. No. 438, dated 3rd May 1876; *vide* G. R. No. 3043, dated 22nd idem.)

7. Section 43 of Act III of 1874 gives the Collector power to determine what number of officiators is required for the proper performance of the duties of an office, and to secure that performance to direct that it shall be provided for in one of several alternate ways laid down in that section, one of which is by nominating to serve in successive periods representative Watandárs who now or heretofore have served contemporaneously. This was especially meant to apply to cases in which (as in Khándesh) a number of men were serving at the time but inefficiently, and if the Assistant Collector is of opinion that one man is sufficient to do the duty of both Revenue and Police Patel in a village, it is quite competent for him to nominate one, and to change the practice from contemporaneous to successive service. (G. R. No. 3291, dated 23rd May 1877.)

8. It does not follow that because a man has never served that therefore he has not the right to serve. If, for instance, the custom of the watan has been for the Collector to select an officiator for service, and the Collector does not happen to have selected from certain taksíms, it would be very hard to rule that all who have not been selected should for ever be barred from the right to serve. (G. R. No. 474, dated 23rd January 1882.)

9. Vacancies in watans of which the new registers have not been prepared by the Assistant Collectors should be filled up by appointing the person whose turn appears on the old register provisionally that if the new registers should be prepared before

his term expires, and his claim to serve should be rejected, he is to vacate in favour of the Watandár to whom the Assistant Collector accords the right, unless he should appeal. Should the Assistant Collector when preparing the new register continue such Watandár in office, his appointment shall be made under Section 38 to commence from the date when he was provisionally appointed, provided that no such appointments shall be made until the period for making appeal shall have passed; or if appeal be made, till it be decided. If between the date of the Assistant Collector's decision and the decision on appeal the office shall become vacant it shall be filled up in accordance with the Assistant Collector's decision provisionally that it will be vacated if the decision on appeal is adverse to the holder. (G. R. No. 7412, dated 23rd October 1882.)

10. The fact that in cases in which watans are owned by Sardárs of so high a rank that they cannot be reasonably expected to serve in person they may be permitted to appoint deputies, does not exempt them from the liability to be called upon to serve in person, and a claim to appoint deputies without the liability to serve in person is untenable. (G. R. No. 8408, dated 30th November 1882.)

11. Section 50 of the Watan Act does not lay down that when appointing a deputy the Collector is not to consult the representative Watandár, if the latter has been rejected as being of known bad character or removed on account of grave misconduct. (G. R. No. 4784, dated 13th June 1884.)

12. Probationary appointments are not in accordance with Act III of 1874. The whole tenor of the Act is in the direction of making final appointments for fixed terms so as to prevent frequent changes and the trouble and local excitement they involve. (L. R. No. 614, dated 14th May 1885; *vide* G. R. No. 4433, dated 3rd June 1885.)

13. The record of past services in a watan showed that contemporaneous service by officiators from the two Watandár families had not been uniformly and consistently maintained, and having regard to the figures of population and jamábandi of the village, it appeared that one officiator could manage the village efficiently. Moreover, the representative Watandárs had agreed to serve in successive periods. In the circumstances the Collector requested the sanction of Government to an alteration to the following effect in the order of service fixed by the District Deputy Collector: "Service is to be alternate and not contemporaneous." Government ruled that as under Section 43 of Act III of 1874 the Collector has discretionary power to direct service in successive periods by representative Watandárs who have hitherto served or are serving contemporaneously, the proposed alteration might have been made by the Collector without the sanction of Government, and that in such cases the proceedings need not be submitted to Government for orders as required

by Government Resolution No. 7192, dated 5th September 1885. (G. R. No. 1951, dated 12th March 1886.)

14. The provision of Section 54 of Act III of 1874 does not appear to be opposed to permitting a Watandár, who has resigned office owing to inability to serve, to nominate a deputy for the remainder of his term of office, which is less than five years. Section 54 distinctly states that "when a Watandár entitled to officiate appoints a deputy it shall be for a term *not less* than five years," but this is not intended to mean that the *same man* must act as deputy for the whole term of five years, and that if he did not do so the right of appointing another deputy would lapse. It merely means that the appointment of a deputy should not be knowingly and intentionally made for less than five years. (G. R. No. 451, dated 20th January 1888.)

15. As Section 43 of Act III of 1874 empowers the Collector "to determine the number of officiators required for the proper performance of the duties of any office from time to time" and to arrange the order of service, the sanction of Government is not required in such cases. (G. R. No. 8104, dated 5th December 1888.)

16. Section 45 of Bombay Act III of 1874, as amended by Bombay Act V of 1886, specifies certain cases in which the Collector shall refuse to accept service from a representative Watandár or his nominee, but it is not clear that it necessarily follows from this that the Collector is bound to accept an officiator in all other cases not falling within the scope of that section. The latter cases seem to be governed by Sections 42 and 43 of the Act, under which the Collector is bound to accept service only when the Watandár or his nominee is a "fit and proper person." Under the provisions of these sections it is apparently within the discretion of a Collector to refuse to accept the service of a Watandár or his nominee who, although not absolutely disqualified under Section 45, is not considered to be fit and proper in other respects. (G. R. No. 3421, dated 12th May 1893.)

17. The following form of register should be adopted throughout the Presidency Proper :—

(G. R. No. 5468, dated 29th July 1893.)

Register of Appointments of Patels and Kulkarnis made under Bombay Act III

Serial No.	Name of person appointed.	Whether representative Watandár or deputy.	If a deputy, whether appointed on behalf of Government or by the representative Watandár, and in the latter case the name of the representative Watandár.	Period of Appointment.		No. and date of report from Mámlatdár.
				From	To	
1	2	3	4	5	6	7

N. B.—Separate pages should be allotted to each village and to Patels and Kulkarnis separately (as is done in the case of Táluk
One book may run for several years.

18. If families descended from a common ancestor are admitted to independent right of registration they should be treated as distinct families for the purpose of Section 53 of Act III of 1874, as amended by Act V of 1886. (G. Rs. No. 802, dated 31st January 1895, and No. 1182, dated 7th February 1896.).

PART IX.—PENALTIES.

1. It is unnecessary, except in special cases, which the Commissioner may take into consideration, to forward English magisterial proceedings along with applications to Government to confirm the dismissal of hereditary officers.

All that appears to be necessary is that when under Act XI of 1843* a Revenue officer proposes to dismiss a hereditary district or village officer for incompetency or misconduct, he should hold some formal proceedings in which he should record in detail what such officer has done to deserve dismissal, and record what the officer has to say in his defence, and submit the same with his opinion, through the Commissioner, to Government. But in cases in which the hereditary officer has been convicted and punished by the Magistrate, or Session Judge, or their Assistants, it will be sufficient to record the facts on which the conviction rested and the result of any appeal, if made, or if none has been made, and to state that such is the case, without holding any formal proceedings.

* Repealed by Bombay Act III of 1874.

The desire of His Excellency in Council in issuing these instructions is to check the summary and informal manner in which cases of dismissals are sometimes disposed of and in which the defence or counter-statement the hereditary officer may have to oppose against the charges on which his dismissal is recommended, is frequently not placed before Government, unless he appeals.

(G. L. No. 3473, dated 2nd October 1860.)

2. The instructions contained in the following circular of the Commissioner of Police, No. 2668, dated 29th November 1858, must be held to be applicable to cases of nominations by Government—that is, to nominations whenever from disagreement among the shareholders, or from the refusal of the Watandár to appoint, the power of nomination becomes vested by law in the Collector. In cases of selection by the shareholders or mere succession, the law must take its course :—

> "I have the honour to inform you the Government direct that an immediate or near relative, such as father, son or brother, should not be appointed as the successor of a village police officer who has been dismissed on conviction by a competent Court of having committed crime in the conduct of the duties of his office."

(G. L., J. D., No. 692, dated 28th February 1860 ; *vide* G. M. Nos. 861 and 862, dated 3rd March 1860, to the Revenue Commissioners, S. D. and N. D.)

3. As a general rule, a Collector possessing the confidence of the rayats of his district can, without troubling Government, induce Watandárs to perform those duties which are attached to their offices. Without instituting any criminal prosecutions the

Collector can deal with the case and fine a Watandár who refuses to comply with the order of a local officer to attend on a certain date for the purpose of signing the list of shareholders. These orders to fine are applicable only to officiating Watandárs. It is left to the Commissioners to institute such rules as are within their authority, and considered by them as appropriate, in order to secure proper attention on the part of the Watandárs. (G. R. Nos. 4193, dated 3rd December 1867, and 536, dated 8th February 1868.)

4. The power of dismissing a hereditary Patel must be regulated under Bombay Act III of 1874. The authority conferred by Section 57 of the Act can be delegated to an Assistant Collector. (G. R. No. 5716, dated 6th October 1876.)

5. The sanction of Government is necessary for the removal from office, under Section 58 of the Hereditary Offices Act, of a deputy who is not a Watandár of the same watan. The word used in Section 58 is "officiator," and that is defined in Section 4 of the Act to include a deputy. The first part of Section 61 enacts that as regards penalties the same rules shall apply to deputies as to representative Watandárs.

But when any such deputy has been removed under Section 58, the Collector is not entitled, under Section 50 of the Act, to refuse to allow the representative Watandár to appoint a successor and to appoint one himself. The latter part of Section 61, it is true, empowers Government to direct the forfeiture of a representative Watandár's life interest in any case in which a deputy appointed by him has been removed from office under Section 58. But unless Government take this extreme step, the representative Watandár's right of nomination remains. Section 50 only applies when a representative Watandár has himself been removed from office under Section 58, and the latter part of Section 59 also shows that it is only in case the officiator so removed "be a representative Watandár" that the appointment of a new deputy may be made by the Collector.

(L. R. No. 381, dated 9th April 1879; *vide* G. R. No. 2033, dated 17th idem.)

6. The misconduct in Sections 50 and 59 of the Watan Act is misconduct of the Watandár himself. (G. R. No. 2033, dated 17th April 1879.)

7. Section 58 of the Watan Act authorizes the removal from office of an *officiator* for grave misconduct. If the offending officiator is a deputy, the Watandár whom he represents may be declared ineligible for re-appointment. In a case in which a recommendation was made by a Collector that a *non-officiating* Patel, who had been convicted of theft, be declared incapable of serving as Patel and his deputy dismissed, it was held by Government that in that case it was not the deputy who had com-

mitted any offence and that there was no section in the Act under which the recommendation could be sanctioned, nor was it necessary, for the Collector could always refuse to accept the services of the Watandár under Section 45. (G. R. No. 2370, dated 27th April 1881.)

8. The following opinion expressed by the Commissioner, C. D., which is supported by the wording of Section 59 of the Watan Act, was concurred in by Government:—

"A and B are two representative Watandárs—the custom of service, one officiator to serve by rotation.

"A is appointed to serve for 10 years; before his term is completed he is dismissed under Section 58 of the Watan Act.

"The question is whether A's term of service has been virtually ended by his dismissal from service or whether the term still exists and it is left to Government to appoint a deputy.

"If his term has ended, then the term of service of B will commence, and in place of the Collector appointing a deputy in the place of A, B can either serve personally or appoint a deputy.

"I am of opinion that A by his dismissal has lost his turn of service and that the turn of B must be considered to have commenced."

(G. R. No. 1692, dated 23rd March 1881.)

9. Section 7, Act XI of 1843, empowered the Collector, with the approval and sanction of Government, to dismiss an officiating hereditary officer from his office, 'in cases of misconduct or incompetency.'

Section 57 of the Hereditary Offices Act empowers the Collector to inflict minor punishments on an officiator for ordinary misconduct or neglect of duty, and Section 58 enables him, with the sanction of Government, to remove an officiator from office in 'case of fraud * * * or other grave misconduct.'

Section 7 of Act XI of 1843, and Section 58 of the Bombay Hereditary Offices Act do not, therefore, apply to precisely similar cases; and it would be hard to visit upon a Watandár, who had been removed from office under the former section for ordinary misconduct or incompetency, the consequences which Section 59 of the Hereditary Offices Act reserves for those removed from office for grave misconduct. Moreover, there is nothing in the Hereditary Offices Act which indicates that the Legislature intended that removals from office under Act XI of 1843 should be equivalent to removals under the more restrictive provisions of the former Act.

(L. R. No. 1042, dated 2nd August 1883; *vide* G. R. No. 6518, dated 1st September 1883.)

10. Serious official misconduct on the part of hereditary village officers should always be dealt with by the Sessions Courts, in order to enable Gov-

ernment to confiscate the watans. (G. R.,* J. D., No. 3130, dated 29th May 1879, and G. R. No. 4767, dated 16th September 1879.)

11. The "official duties" mentioned in Section 60 of Act III of 1874 must appertain to the office held by the representative Watandár, or to which he appoints a deputy.

"Misconduct" in Section 57 and "grave misconduct" in Section 58 of the Act ought to be construed as referring to misconduct in the course of the official duties of the representative Watandár or to which he has appointed a deputy.

(Adv. Genl. No. 81, dated 16th August 1880; *vide* G. R. No. 4576, dated 1st September 1880.)

12. The power of forfeiture conferred upon Government by Section 60 of the Hereditary Offices Act extends only to the particular watan in discharging the duties of which an offence has been committed. (L. R. No. 1534, dated 15th November 1884; *vide* G. R. No. 9628, dated 5th December 1884.)

Forfeiture of interest in a watan clearly includes forfeiture of right of service.

(G. R. No. 9628, dated 5th December 1884.)

13. The following rule has been framed under Section 82 of the Watan Act:—

> Under Section 82 of the Bombay Hereditary Offices Act, 1874, the Governor in Council is pleased to direct that whenever any representative Watandár or any deputy or substitute appointed by him is convicted by a Criminal Court not inferior to a Court of Session of any offence in the discharge of his official duties or of any of the offences specified in the second schedule of the said Act or of any abatement of any such offence the Collector shall after the period of appeal has expired or after the decision of the appeal in case an appeal has been made, report the circumstances with his opinions thereon in order to enable Government to decide what action, if any, shall be taken under Section 60 of the said Act.

(G. R. No. 2793, dated 3rd May 1888.)

14. The forfeiture of any watan property, held purely for future service, cannot be called in question in any Civil Court. The Watan Act, moreover, removes all possibility of doubt as to the liability of forfeiture on the conviction of a holder or his officiator for certain crimes.

Section 60 of the Watan Act aimed at the prevention of crimes by those in office, by declaring the responsibility, not of the individual nominating the deputy alone, but the joint responsibility of all who

* All criminal charges against officiating Watandárs or deputies, of offences in the discharge of their official duties should, if the evidence is such as is likely to secure a conviction, be committed to the Court of Session. (G. R., J. D., No. 3444, dated 16th June 1879.)

might have interests in the watan. Joint responsibility of this nature was familiar in India long before the British rule (*vide* Mount Stuart Elphinstone's report on the Territories conquered from the Peshwa, 1821, pages 35 *et seqq.*), and the analogy it affords to the institution of frank pledge in England has been noted by J. Fitz-James Stephen and Sir F. Palgrave.

Stephen's General View of the Criminal Law of England, pages 25 and 26.

The object was not to hold the individual responsible for his nomination, but to restrain crime by a species of social pressure coming from all sides, and generating a peaceful and orderly system of self-discipline. The whole body of Watandárs are expected not only to select their deputies with caution, but also to exercise this restraining influence over them when appointed.

The section itself is very distinctly and emphatically worded, so as to show that not only the interest of the nominating Watandár, but the whole or *any* part of the watan, may be forfeited on the conviction of any deputy of any representative Watandár. Properly speaking, no Watandár can be regarded as having more than a life interest, and it could not therefore have been intended that the responsibility should be limited by the nature of the actual incumbent's estate.

I. L. R., 6 Bom., 211.
I. L. R., 7 Bom., 420.

As it appears that the object was to make the body of Watandárs vigilant in preventing official misconduct by their united influence, it does not seem that it was intended that any one of them could, by recording a protest against an appointment, save himself or his interests from the consequences of failure in this respect.

The amended Section 60 extends to any conviction in a Court not inferior to a Court of Session of any offence committed in the discharge of the official duties, and would certainly cover a case of torture of a prisoner or suspect, resulting fatally.

(L. R. No. 1384, dated 19th October 1889; *vide* G. R. No. 8301, dated 31st idem.)

PART X.—MAHA'RS.

1. In the Panvel Táluka the Mahárs' allowances should be disbursed only where this class of servants are entertained, being held at the disposal of the Collector in those villages in which there are no Mahárs, for payment in the event of any being found willing to reside in the village and perform the duties. In those villages in which the Mahárs' duties are performed by Mudwis, the allowances should be paid to them. The allowances should be limited to one per cent. in villages the revenue of which exceeds Rs. 2,000. (G. R. No. 5568, dated 28th December 1861.)

The whole of the Panchotra allowance to the Mahárs in the Panvel Táluka should be paid to the Mahárs themselves and to no one else. (G. R. No. 4264, dated 22nd November 1862.)

2. Mahárki watans cannot be treated as separate taksíms as regards service in the same manner as other watans, as the custom of the country has always been to call at any time, if the necessity arose, for the service of all Mahárs either severally or jointly. Yet for the purpose of making the settlement decision required by clause (*c*), Section 64 of Act III of 1874, the settling officer might, if he consider it expedient, consider into what families or branches the Mahár watan has been by long custom divided. (G. R. No. 1954, dated 12th March 1886).

PART XI.—WATAN REGISTERS.

1. The work of preparing watan registers *de novo* should as far as possible be carried out on the spot.

These new registers must usually be made by the Assistant and Deputy Collectors in charge of tálukas in the manner prescribed by the Act. Regard should be paid to the convenience of the parties, and those cases in which vacancies are about to occur should be taken up first.

Care should be taken to avoid, as much as possible, obliging the parties to appear in person; and only in cases where there are doubtful or important points to be decided, their attendance should be insisted upon. (G. Rs. Nos. 5115, dated 8th September 1875, and 5861, dated 18th October 1875.)

2. The register itself shows that the same names as are entered in column 22 as representative Watandárs need not necessarily be entered in column 20 as head of families. When the original family or oldest branch has ceased to have any connection with the watan at all, the name of the head of it will not be entered at all in the watan register. When a connection still exists, the head of that family will appear in column 20, but whether or not also in column 22 must depend on the decision passed under Part VI of the Act. Cases under Section 56 are generally clear; the head of the original watan family is entered in column 20; the hereditary deputy in column 22. (G. R. No. 7127, dated 20th December 1875.)

3. It must be noted that the annas of taksíms do not *necessarily* add up so as to make exactly one rupee. The column of remarks in the register may always explain this in case of doubt. (G. R. No. 7127, dated 20th September 1875.)

4. Village servants such as sutárs (carpenters), lohárs (blacksmiths), &c., who, though of no such service to Government, are of use to the village communities, and therefore subjected to a quit-rent equal to one-fourth the value of their watans, are to be entered in the non-service registers. (G. R. No. 5238, dated 14th September 1875.)

5. It is impossible to have all the watan registers kept in English, but the entry of each watan in the watan register should be attested by the settling officer's signature. (G. R. No. 5932, dated 21st October 1875.)

6. Watan registers which profess to have been unanimously agreed to by the share-holders before the passing of Act III of 1874, but which have not been prepared and recorded in the hand-writing of a Collector or Assistant Collector, are illegal. (G. R. No. 1557, dated 13th March 1876.)

7. Watan registers must be re-written on a revision of the survey settlement. (G. R. No. 6930, dated 10th December 1875).

PART XII.—MISCELLANEOUS.

1. Section 1 of Bombay Act III of 1874 declares that the Act extends to all villages alienated or otherwise, so far as its provisions shall not conflict with the terms on which any such alienated village may have been secured to the holder thereof.

When a village has become the private property of its holder, the papers and records prepared therein concern the holder alone and do not in any way affect the rights or interests of Government, and cannot be regarded as the property of Government. It would conflict with the terms on which the village is secured to the holder if he could be called on to produce accounts and papers relating to his private property; and it seems, therefore, that Section 70 of the Act does not extend to such villages.

So far as any of such records may affect questions of general administration unconnected with the private rights of the holder, such for instance as the Register of Births and Deaths, their production may be legally enforced under the section in question.

The object of the section appears from page 215 of Volume XII of the Proceedings of the Legislative Council, 1873. It was to prevent the fabrication of documents to support claims to hold land free. When a village has already been declared private property, it is clear that the necessity for this precaution no longer exists. (L. R. No. 841, dated 18th July 1889; *vide* G. R. No. 5383, dated 27th idem.)

PART XIII.—PROCEDURE AND APPEALS.

1. Government cannot support the action of the Collector in laying down that the sub-sharers in a watan have no right to petition in matters connected with the watan. (G. R. No. 4726, dated 2nd September 1874.)

2. The wording of Section 73, clause 2 of the Watan Act is strict and should be adhered to, so that those cases in which the reasons for the decision have not been written by the Assistant Collector, but the summary of them signed by him, must also be re-opened. (G. R. No. 1553, dated 13th March 1876.)

3. All decisions must be written and signed in the handwriting of the officer making them. This is one of the most important provisions of the Watan Act, and the law should be strictly carried out. (G. R. No. 2963, dated 18th May 1876.)

4. Government wholly disapprove of the issue of any instructions which would bind the Assistant Collectors to certain general conclusions as to the nature of all watans in any particular district, or to the assumption of certain facts. It is the duty of these officers to determine each case on its own merits. (G. R. No. 5855, dated 13th October 1876.)

5. All orders under the Watan Act should be in English. (G. R. No. 3073, dated 11th June 1879.)

6. Appeals should certainly be allowed from decisions passed before Act III of 1874 was introduced, provided no appeal has been made already. Many decisions have been passed without any proper record of proceedings having been made, and if appeals on such cases were not allowed, it is difficult to see how registers could be prepared *de novo*. (G. R. No. 2963, dated 18th May 1876).

7. The limitations and restrictions in respect to appeals do not apply to cases which have been dealt with prior to the passing of Act III of 1874. As a matter of fact, however, every case must be enquired into again for the purpose of framing the register under the Act, and any dispute that may have arisen can best be disposed of at the time of such enquiry. (G. R. No. 5915, dated 17th October 1876.)

8. In every case relating to the settlement of watans submitted to Government, the particular section of the Watan Act under which the decision has been arrived at should be quoted. (G. R. No. 6071, dated 25th October 1876.)

9. Decisions in cases in which proceedings under the Watan Act have been held before Assistant Collectors should invariably be communicated at the time to the parties concerned. (G. R. No. 499, dated 30th January 1878.)

10. A decision satisfies the requirements of Section 73, clause 2, of the Hereditary Offices Act:—

(1) If it has been recorded with the reasons therefor in the handwriting of a Collector, or his Assistant, or Deputy.

(2) If it has been passed subsequently to 1866.

(3) If it has been preceded by an investigation recorded in writing (not, it seems, necessarily by the same officer who passed the decision).

(4) If before it was passed a proper opportunity had been afforded for the hearing of claims and the production of evidence.

These are the only conditions imposed by the Act, and it is not imperative that the proceedings should be recorded in English, or even that the decision itself should be in English, so long as it is in the Collector's or Assistant's or Deputy's own handwriting. Where, therefore, there has been a decision which fulfils the above conditions, it is immaterial whether that decision was passed on appeal or as an original decision.

Although all decisions which do fulfil the conditions named above may be used in lieu of fresh investigation, clause 2, Section 73, expressly empowers the Governor in Council to "otherwise direct."

(L. R., No. 638, dated 30th July 1878; *vide* G. R. No. 3985, dated 7th August 1878.)

11. In cases in which petitions on watan matters are forwarded to Collectors for report it is the duty of the Collector to report on the different allegations of the petitioners instead of merely transmitting the papers and proceedings in the case, leaving Government to sift out the merits of the case from the papers. (Government Resolution No. 5878, dated 8th October 1881.) Commissioners have power to call for reports on watan cases decided by officers subordinate to them and direct further enquiries to be made or additional evidence to be taken whenever the circumstances of the case may show such a course desirable. (G. Rs. Nos. 5878, dated 8th October 1881, and 7816, dated 22nd October 1883.)

12. It is most necessary that the Commissioners should retain and when necessity arises make use of the powers of supervision which they at present possess. The Commissioners' supervision of the Collectors' proceedings in watan cases is a valuable safe-guard which cannot be dispensed with. (G. R. No. 5399, dated 27th July 1889.)

13. In consequence of the great inconvenience and confusion resulting not unfrequently from the want of uniformity on the part of the Collectors, their Assistants and Deputies in recording their proceedings under the Watan Act for the appointment of representative Watandárs and of the difficulty experienced by Government, when the cases come up for revision, in deciding what is exactly the custom of the watan as to service in each case, the subjoined form of record is sanctioned for general

adoption. In recording proceedings under the Watan Act in future the Collectors, Assistants and Deputies should adhere, as much as possible, to this form to do the same.

In view of the possibility of these proceedings coming before Government on revision or appeal, they should be written in a neat and legible manner.

Record of Proceedings held before under part 6 of the Watan Act, III of 1874, for the village of Táluka Zilla Camp 1881.

The following persons are present :—

A list of the men who have served from the earliest period, with notes showing whether they were selected by the Collector or by the sharers under Act XI of 1843, Section 4, is appended.

Custom of the Watan.

Under this head state distinctly :—

(1) Whether it is the custom "for a member of one family only to serve," Section 27, and if so whether he served by the selection of the Collector or the votes of the sharers in the watan or under Act XI of 1843, Section 4.

(2) Whether "a member of each of several families" served "contemporaneously or for successive periods," Section 28, and if for "successive periods" whether this practice existed at the date of the introduction of Act XI of 1843. In both cases enquiry should be made and recorded if the several families served contemporaneously or in successive periods by the selection of the Collector or under Act XI of 1843.

(3) Whether "the practice of selection by the Collector from several families prevails," Section 29, clause 1, and whether he selected one family to serve or several families to serve contemporaneously or for successive periods.

It is not sufficient to record that the custom is "rotation;" this word is not recognised by the Act and had better be abandoned. The Act only contemplates one or other of the customs above noted or perhaps a combination of two or more of them, but whatever remarks you may make on the subject of the custom, you must record a distinct finding under which section of the Act you consider the custom to exist and fix the period of service prescribed by Section 38.

It must be remembered that the mere appointment of one Patel to succeed another on vacancies by death or dismissal or termination of the period for which previous appointments have been made, does not *alone* constitute "service for successive periods," as contemplated in the Act. Service for successive periods can only exist *as a custom* when

it can be claimed *as a right*. When it exists at the discretion of the Collector, it comes more properly under clause 1 of Section 29 "selection by the Collector" or service in successive periods subsequent to 1843. Whether one or more persons served or whether they served for life or in successive periods they were invariably selected by the Collector, though he often fixed the order of service by selection, and therefore established a *quasi* service in successive periods. Having decided the custom of the watan, the next step is to decide who are the

Representative Watandárs.

(1) If you decide that the custom is for a member of one family only to serve, Section 27, then you "shall" register the "name of the head of that family only as representative Watandár."

(2) If you consider that the custom is for a member of several families to serve, Section 28, then you must "register the head of each of such families as representative Watandárs and fix the order in which they shall officiate."

(3) If you find, as you will in the great majority of cases, that service in successive periods has been introduced subsequent to 1843, or that "the practice of selection from several families prevails," then you must determine "if they are descended from a common ancestor, and if so, who is the head of the eldest family descended from the original Watandár and enter his name as sole representative Watandár," but if they are not descended from a common ancestor, then you must "register the names of the heads of such families" and the order in which they are to serve, Section 29, clause 2.

(4) If you find that service in successive periods has been introduced under British "rule in consequence of the reduction of the number of sharers or the amalgamation of watans," then it will be your duty to enter the names of the heads of each family that formerly "officiated as representative Watandárs," Section 30, and the order in which they are to serve. Whatever remarks you may find it necessary to make, you should quote the section under which you enter the names of the representative Watandárs.

It will be observed that, when the practice has been selection by the Collector, Section 29, clause 1, if the Watandárs are descended from a common ancestor then the name of the head of the eldest family descended from the common ancestor (original Watandár) can alone be entered, but as this will operate with great harshness in disinheriting every other member of the watan, you will do well to look with great suspicion on the evidence of a common ancestry, and not admit it without the clearest proof.

When a common ancestry is clearly proved, then you should represent to the Watandárs that unless

they accept a compromise under Section 31 they will all be disinherited except the one sole representative Watandár selected under Section 29, clause 1. When this is properly put before them, they will seldom fail to accept a compromise, and it should then be distinctly recorded that the Watandárs are appointed under Section 31, and that service is for life under Section 38.

When an appeal is made to the Collector or Commissioner from the decision of the Assistant Collector or Collector, the appellate authority should prepare a record, in substance, as follows :—

Proceedings on appeal from the decision of dated before Collector Camp 1881.

Recorded petition of appeal under Section 78.

Note should be taken if the period of 60 or 90 days allowed for appeal has expired.

The objections raised by the appellant should then be briefly stated and the decision with the reasons for it recorded.

(G. C. No. 7878, dated 26th December 1881.)

14. The following opinion (No. 279, dated 1st March 1882) was recorded by the Remembrancer of Legal Affairs on the question whether a decision passed by a Collector on an appeal and under the Watan Act admitted after it was time-barred would be legally valid :—

"Chapter XIII of the Land Revenue Code, 1879, relates to appeals from any decision or order passed by a Revenue officer under that Code 'or any other law for the time being in force,' and Section 206 provides for the admission of an appeal under that chapter after the period of limitation on sufficient cause being shown for not presenting the appeal within such period; and no appeal lies from an order passed under that section admitting an appeal."

(G. R. No. 1920, dated 22nd March 1882.)

15. The Commissioners of Divisions when forwarding to Government a case for revision under Section 79 of Act III of 1874 should, when the interests of the person in whose favour the decision of the lower Court operates will be injuriously affected if the Commissioner's recommendation is adopted, give him an opportunity of making any representation upon it which he thinks necessary for a just appreciation of his case. (G. R. No. 5381, dated 3rd July 1885.)

16. In watan appeal cases fresh evidence should certainly not be admitted without limit or reserve, and the admission of fresh evidence in appeal should be regulated by the procedure laid down for Civil Courts in the Civil Procedure Code. (G. R. No. 6981, dated 1st September 1884.)

17. The principles on which Civil Courts act as to the admission of evidence which it is the duty of the parties to produce should be the guide in the hearing of watan cases. (G. R. No. 8, dated 3rd January 1885.)

18. In watan appeals a Collector or Commissioner can only pass his decision on the points raised in appeal, but when a decision appealed against is found not to be in accordance with law in respect of points other than those raised on appeal, the proceedings in the case should be submitted with the Commissioner's opinion to Government for revision under Section 79 of the Watan Act. (G. R. No. 7192, dated 5th September 1885.)

19. A Collector has no authority under the Bombay Hereditary Offices Act to review a decision passed by himself. Government have directed that the admission of fresh evidence on appeals under the Act should be regulated by the same rules which apply to the admission of such evidence under the Civil Procedure Code. There were, no doubt, good reasons for this order, and as it does not confer upon Collectors any new power which they do not possess under the Act, there is no legal objection to it. But it is not competent for Government to direct that Collectors may review their own decisions. The Act provides ample means for correcting any erroneous decision which may be passed. (G. R. No. 988, dated 2nd August 1886; *vide* G. R. No. 5922, dated 19th idem.)

20. It is undesirable to confer powers under Bombay Act III of 1874 on Inámdárs save in very special and exceptional instances. (G. R. No. 2183, dated 19th March 1886.)

21. The following opinion of the Remembrancer of Legal Affairs, No. 707, dated 29th June 1889, was communicated to the Collectors and Commissioners :—

"In the matter referred to in the Government memorandum, marginally noted, the Collector of Sátára reversing an order of his Assistant refused to allow one Náráyan to officiate as a Kulkarni, because six years previously the brother of the said Náráyan had been convicted of breach of trust.

No. 2948, dated 17th April 1889.

"2. The Commissioner, C.D., dealt with the matter on appeal and reversed the Collector's order.

"3. The Collector has now raised the question whether an appeal lies.

"4. The Commissioner is of opinion that Section 77 does not apply to this case so as to bar a second appeal, as that section only refers to decisions passed after investigation recorded in writing, and Section 73 does not require an order of this nature to be passed after such investigation.

"5. Section 73, however, is not exhaustive in its enumeration of investigations requiring record in writing, and though it does not require an order refusing the service of a representative Watandár to be so recorded, Section 45 (*e*) as amended by Section 9 of Bombay V of 1886 does.

"6. The order of the Collector was entirely *ultra vires*, as Section 45 only contemplates such

a refusal in the case of a representative Watandár who is *personally* of bad character, and such refusal must be preceded by a summary enquiry regulated by Section 195, Bombay Land Revenue Code, in which a minute of the proceedings must be recorded in the Collector's own hand and must embrace the material averments of the parties.

"7. I think an appeal in this particular case would lie from the Collector's order to the Commissioner. For that order was a new and substantive order passed in a matter requiring investigation. Although it purported to be passed in appeal, it was really not an order that could legally have been passed by the Collector in his appellate capacity, but one which would fall under a distinct section of the Act, in the exercise of a distinct and special power requiring an investigation for which a special procedure is prescribed, and which, under Section 196 of Bombay V of 1879, became, what his Assistant's proceeding was not, a judicial proceeding.

"8. I therefore think that his refusal to accept the service of the representative Watandár was a substantive and original order in itself, and that an appeal lay to the Commissioner.

"9. I think that the general control given to Commissioners by Section 74 would not warrant their interference in particular instances, but only the giving of general instructions. The power of revising or modifying orders, when no appeal lies, vests in Government alone under Section 79."

(G. R. No. 5265, dated 27th July 1889.)

22. Section 203 of the Bombay Land Revenue Code, 1879, provides for an appeal from all decisions and orders, original or appellate, passed by a Revenue officer under any law in force, unless the right of appeal is expressly withheld by legislation. Not only an appeal but a second appeal will lie from a decision or order under Act III of 1874, as amended by Act V of 1886, passed without recorded investigation.

The conclusion that the Bombay Land Revenue Code expressly provides for appeals in such cases, is borne out by the history of the Bombay Land Revenue Code itself.

Bombay III of 1874 does not expressly provide for an appeal, except in the case of decisions passed after investigation recorded in writing by a Collector, Assistant or Deputy. But, on the other hand, it does not deny the right of appeal from any decision or order, except in the cases specially enumerated in Section 76.

Section 203 of the Bombay Land Revenue Code enacts that an appeal shall lie from *any* decision or order passed by a Revenue officer under any law for the time being in force in the absence of an express provision of law to the contrary.

There cannot be the slightest room for doubt that Section 203, Bombay Land Revenue Code, had in contemplation decisions and orders which might be passed under Bombay III of 1874.

For the Bombay Land Revenue Code was under most careful consideration for more than five years. It was first taken in hand not long after Bombay III of 1874 became law, and was originally intended to consolidate the entire law governing the duties and procedure of Revenue officers.

The provisions of Bombay III of 1874 were actually embodied *in extenso* in the second draft of the Code as Chapter III thereof, and in redrafting those sections, the greatest care was taken to specify in each section whether a summary or a formal enquiry should be made before passing a decision or order. In this draft, which was printed with the comments of all the officers consulted, Mr. Naylor remarked (Section 268) that 'the object of these sections has been to secure a proper investigation and regularity and uniformity of procedure in all matters in which Revenue officers are called upon to exercise judicial or quasi-judicial functions, and thus to remove one great objection which now exists to barring the cognizance of any such matters by the Civil Courts, *viz.*, that under the existing law, Revenue officers are bound by no rules of procedure, and may, if they choose, decide upon the most important questions, not only in the absence of those concerned, but also without making any enquiry or hearing any evidence at all. In every instance, therefore, in which an inquiry is directed to be made in this Bill, it has been stated whether such inquiry should be formal or summary, and where neither a formal or summary inquiry is prescribed, the officer is left to resort to such ordinary means of obtaining information as he may be directed to use by his superior officers or as may seem to him most fit.'

Had that draft been accepted in its integrity, a summary enquiry would have been necessary, as a condition precedent to orders now passed under Sections 8, 9, 11, 18 and several other sections of Bombay III of 1874, and a formal enquiry would have been required for orders now passed under Section 25 and other sections of the same Act.

In cases where such enquiries had been held and recorded by *the Collector, his Assistant or his Deputy,* it seems to have been thought that *one* appeal would be sufficient to secure accuracy of decision and provided against irregularities.

The chapter of that draft relating to Hereditary Offices, like the parts relating to Summary Settlement, were, however, in consequence of correspondence with the Government of India, omitted from the Bombay Land Revenue Code, and thus no exhaustive provisions exist as to procedure to be followed before passing a decision or order under each section of Bombay III of 1874. The proceedings of Revenue officers may, however, be regulated by supe-

rior official direction and control under Section 188, or by rules under Section 197, Bombay Land Revenue Code.

But where it was intended to specify the procedure necessary under each section, it was still contemplated that an appeal and second appeal should lie from every decision and order passed, unless enquiry duly recorded had been made by certain officers of high official standing. It was only in the case of decisions passed after investigation recorded in writing by a Collector, Assistant or Deputy that only one appeal was held to be necessary.

Apparently it was thought that where the procedure was informal, and the grounds for decision not clearly and fully set forth, there was all the more necessity for appellate control.

Section 203 of the Bombay Land Revenue Code was thus advisedly framed with reference to the provisions of Bombay III of 1874.

When the provisions requiring recorded investigations were abandoned, Section 203 was retained, and appears to have been recognised by the Legislature as necessary to provide for cases of informal procedure.

It has been argued that as only one appeal lies where investigation has been made and recorded, it may be assumed *à fortiori* that no second appeal would have been deemed necessary where no investigation had been held. But the view taken in the preparation of the Code appears to have been the reverse of this. The draft would have allowed but one appeal, if the decision were accompanied with a record containing its justification. In all other cases a second appeal would lie from all decisions and orders passed in the exercise of powers conferred by the Act.

Decisions and orders may, as Act III of 1874 stands, be passed without any record of investigation in cases for which it was at one time proposed to require such record. Section 203 of the Bombay Land Revenue Code was apparently advisedly retained to cover such cases. If the Collector, his Assistant or Deputy has himself investigated before passing his order, and has recorded the grounds of his decision, then the Legislature appears to have thought there would be no such necessity for a second appeal as would exist in cases where a Revenue officer might in the words of the Honourable Mr. Naylor 'decide upon the most important questions, not only in the absence of those concerned, but also without making any inquiry or hearing any evidence at all.' (G. R. No. 8506, dated 8th November 1889.)

23. Officers holding proceedings under the Watan Act should not merely cause notices to be affixed to the 'chávdi' under Section 80, but take such other measures as are likely to be effectual for securing the presence of parties interested, either by adopting a procedure similar to that prescribed in Sec-

tion 191, Land Revenue Code, or in such other way as may seem proper under the circumstances. (G. R. No. 6302, dated 3rd October 1898.)

24. There is no objection to applications for permission to alienate any watan being presented to the Collector in the first instance and being by him submitted to Government (through the Commissioner) for orders. (G. R. No. 3261, dated 20th April 1896.)

(G. R. No. 3270, dated 21st May 1888.)

Register of Service Lands and Allowances of Matádárs under Section 65 of Bombay Act III of 1874 and Section 5 of Bombay Act VI of

Táluka , District

No.	Name of Village.	Number of distinct matádári families separately recognised in the Collector's records, Section 5 *a*.	Names of Matádárs according to existing lists (Section 7) or as ordered by the Collector to be entered under Section 7 (*a*).	Names of representative Matádárs of each family to which a right to hold the office of Patel appertains, Section 5 (*b*) and Section 8.	Order of rotation in which failing appointment by election the right to Patel's office is to vest in the representative Matádárs (Section 5 *d*).	Description of Service Lands held by each Matádár family (Section 5 *f*).					Amount and nature of cash or other allowance held by each Matádár family (Section 5 *g*.)	Number of persons required to officiate as Patels (Section 5 *e*.)	Watan property or profits assigned for the emoluments of the Officiator (Section 5 *b*).		Date on which Watan Register prepared
						Survey number.	Area.	Assessment.	Quit rent if any, payable to Government.	Net Revenue alienated by Government for watan.			Cash.	Land.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
								Rs.		Rs.					
1	Atgam ...	Four ...	A. B. ...	A. B. ...	C. D. 1 (1889 to 1899).	11	5	30	...	30	5	One	Rs. 100 cash allowance from the Treasury	Rs. 100 from the lands mentioned in column 8 at Rs. 25 from the lands held by each of the four represent a t i v e Matádárs.	25th, Ju
			C. D. ...	C. D. ...	E. F. 2 (1899 to 1909).	12	5	30	...	30	5				
			E. F. ...	E. F. ...	G. H. 3 (1909 to 1919).	13	5	30	...	30	5				
			G. H. ...	G. H. ...	A. B. 4 (1919 to 1929).	14	5	30	...	30	5				
			J. K. ...	.....	.....	15	1	5	...	5	5				
			L. M. ...	.....	.....	16	1	5	...	5	5				
								130		130	Out of the assessment of the lands held by each.			200	

2. The following reply given by the Commissioner, N. D., in his letter No. 1824 dated 12th June 1888, to the Collector of Broach, on the subject of the preparation of registers and the appointment of Police Patels under Bombay Act VI of 1887, was approved by Government :—

"2. I think that you have misunderstood the portion of the debate quoted by you. It appears to me that the remarks of the Honourable Mr. Richey and of His Excellency the President have the effect simply of showing that *the particular clause of the Bill then under consideration* had no bearing on *Police Patels*, because such officers are appointed under special commission by the District Magistrate, who may therefore insist on such educational test as he considers necessary.

"3. The connection of the Police Patel's office with the patelki watan is of very old date, and I will endeavour to show that such connection has never been legally severed.

"4. Regulation 4 of 1818 establishes 'a system of Police founded chiefly upon the ancient usages of the country' and under Section III 'Heads of villages' are appointed 'heads of the Police of their respective villages.' These 'Heads of villages' are defined as persons coming under the denomination of Patels, Pátidárs, or any other designation, the person who collects the revenue, and under whose authority the village servants act.'

"5. Section VI of Regulation 12 of 1827 prescribes (*a*) that when there is *only one* Revenue Patel, he should be also the Police Patel, and (*b*) that when there are *more than one*, the Police Patel should be selected by the Magistrate. The Police duties are thus entrusted to the responsible body of revenue managers the Matádárs.

"6. Act XI of 1843 recognises the principle of hereditary officers performing Police duties (see Sections 2 and 15).

"7. Section 5 of the Village Police Act has already been quoted by you. This continues the principle of the Regulation of 1827 already referred to.

"8. The definition of 'Hereditary officer' in Bombay Act III of 1874 has in no way been modified by subsequent legislation, and 'an hereditary officer' consequently continues to include one 'connected with the village Police.' Any other supposition would involve a vital change from the system above established which is referred to by the Honourable Mr. Richey in the concluding words of your first quotation, and any such change would require legal provision.

"9. I think, moreover, that the words 'every Patel's office' in Section 13 of the new Act may have been inserted to prevent any possible misunderstanding.

"10. Under the above explanation your difficulty regarding the *emoluments* of the Police Officiator will probably be removed. Under Section 23 of the old Act you decide how many officiators are required, and subsequent grant to one of these of a Police Commission cannot affect the authority for his appointment. You divide the emoluments in the usual manner, *adding* an allowance when necessary under the rules at page 348 of the Survey Manual.

"11. In reply to your 4th question I beg to refer you to Government Resolution No. 3014 of the 22nd August 1866,*

* This Resolution laid down the following rules with a view to obviate delay in the investigation into claims under Act XI of 1843 to hold the appointments of Patel and Kulkarni :—

'A complete list of all the shareholders in each watan in districts where such lists are not already kept should be prepared as soon as possible; and a column left for any alterations that may hereafter be necessary consequent on the occurrence of death, or other vacancies. This list should be signed by the shareholders. In cases of dissent the entries should be made on the order of the Assistant Collector pending a decision of a Court of Law. At the expiration of ten years, a fresh Register, embodying all the alterations that may have been made during the interval, should be prepared.

and to this office vernacular, dated 17th January 1867. Registers made in accordance with these orders, or subsequently under Act XI of 1843 or III of 1874 are the lists referred to (in section 7 of Act VI of 1887)."

(G. R. No. 4530, dated 9th July 1888.)

3. The general object and provisions of the Matádári Act, 1887, as well as the express words of its Section 1 shows that the Legislature intended that all "existing" appointments to Patels' offices in the districts to which the Act extends should cease to hold good, at the latest, on the expiry of two years from the Act coming into force, and that fresh appointments should be made to those offices under the provisions of the Act. (L. R. No. 908, dated 26th May 1891; *vide* G. R. No. 5590, dated 14th August 1891.)

4. Section 7 of the Matádárs Act prescribes the method by which the Collector is to ascertain the names of Matádárs to be entered in the register prepared under Section 5.

Where a list of Matádárs made under the orders of Government subsequent to the year 1866 exists, and the entries in it were not the subject of dispute when the Act came into force, the names in that list are to be entered in the register.

But in the cases described in proviso (*a*), which include the case of there being no such list as above-

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'At the time of the Jamábandi settlement the Mámlatdár should submit a list of all the vacancies that are known to be about to occur during the ensuing year; and the officer making the settlement should then and there in the presence of the parties, make the nomination. All disputed claims relating to the entry of shares in the list above referred to should be disposed of in the same manner and at the same time. The grounds of decision in all cases should be briefly written by the officer making the appointment in his own handwriting.'

In Government Resolution No. 764, dated 23rd February 1869, the following further instructions were given in regard to disputed claims by village hereditary officers to officiate :—

'His Excellency in Council is satisfied that disputes of this nature can only be properly enquired into and disposed of by the Assistant or Deputy Collector personally taking the evidence of the parties, and recording his decision in their presence.

'The old practice which obtained in so many collectorates of disposing of these cases on the written vernacular reports of the district officers was in every respect a most objectionable one.

'In all cases of appeal to Government a copy of the record of decision should be invariably sent up.'

Government Resolution No. 2967, dated 22nd July 1869, directed that Mámlatdárs should not be allowed to interfere in any way in cases of disputed nomination; that the jamábandi was the proper time at which to dispose of this kind of business; that it would be the duty of the Mámlatdár to submit beforehand to the Assistant or Deputy in charge of the táluka a list of the vacancies that would occur during the ensuing year, distinguishing the cases in which the shareholders were unanimous from those in which they were not, that beyond this the Mámlatdár should not take any part in the matter; that in disputed cases the Assistant or Deputy Collector would make an abstract of the evidence, together with the decision, in his own handwriting, and that Government would not fail to notice with marked displeasure any instance in which these orders might be disregarded.

Government Resolution No. 2183, dated 9th May 1870, directed that a day should be fixed for the investigation, and if, after reasonable notice had been given, the parties did not appear, a decision should be passed in their absence, and that appeals should be discouraged as far as possible, but the Collector or Commissioner or Government should not be precluded from taking an appeal on any palpable error which might perpetuate an injustice.

Government Resolution No. 4809, dated 22nd July 1882, directed that in all disputed cases of village watans submitted to Government the register prepared in accordance with Government Resolution No. 3014, dated 22nd August 1866, should be quoted.

By Government Resolution No. 2516, dated 28th March 1883, the Commissioners were informed that it was necessary to prepare lists under Act XI of 1843 as directed in Government Resolution No. 3014, dated 22nd August 1866, where such lists had not already been prepared.

mentioned in existence, the Collector, after holding a summary inquiry, is to enter in the register "the name of each member of a Matádár family who shall appear to him to have been recognised in the records previous to the year 1867 as a Matádár of the family." The Act does not say what shall be deemed to constitute recognition as a Matádár; this is left to the Collector's judgment, and it is understood that any one with local knowledge can have no difficulty in saying from the records whether or not there has been such recognition.

The entry in the register of the name of the representative Matádár is a distinct matter. That is governed by Section 8 of the Act.

(L. R. No. 1790, dated 30th October 1891; *vide* G. R. No. 8024, dated 24th November 1891.)

5. The Matádárs' Act VI of 1887, while providing in Section 22 for the appointment by the Collector of a Deputy when a *sole* representative declines to officiate and fails to appoint a deputy, makes no such provision for similar default by representative Matádárs. The section quoted was intended to supply the place of Section 44 of Bombay Act III of 1874 repealed (so far, as that last mentioned Act applies to Matádárs) by Section 3 (1) of Bombay VI of 1887.

Section 22, as originally drafted, ran as follows:—

'If a sole representative Matádár *or when there are two or more representative Matádárs each of them in turn*, declines when so required by the Collector to officiate in person or fails to appoint a fit person to be his deputy * * * * the Collector shall appoint a Deputy.'

The words in italics in the above quotation were deleted on the second report of the Select Committee appointed to consider the Bill, apparently because the right of election was by Section 17 (then inserted) to be given in all cases, except where Section 14 would apply, *i.e.*, where there was a sole representative.

On an election failing, the representative Matádár of the family whose turn it was, would have the office (Section 17) and on his declining to officiate or appoint, the right would pass to the family next in order of rotation, and an election would again be necessary. It is evident that the contingency of all the elections proving successively abortive did not suggest itself as one requiring provision for a permanent appointment by the Collector.

It was probably considered where there were several Matádár families in whom the office vested, that there would be no permanent incapacity or default to officiate or appoint, and that the provisions of Section 28 would apply till the vacancy could be filled up in accordance with the provisions of the Act.

Therefore, when all elections have successively failed and the representative Matádárs have succes-

sively proved unable or unwilling to officiate and appoint, the only course practicable is that provided by Section 28, which gives the Collector power to appoint such person as he thinks fit, whether a member of a Matádár family of the village or not, to officiate *temporarily*. Such appointment, however, does not operate as one made under Section 21 would. It is made only in view of an interval occurring between the occurrence of a vacancy and its being filled up in accordance with the ordinary provisions, and it does not interpose any permanent and irremoveable obstacle to the re-exercise of rights by a representative on his becoming able and willing to officiate or appoint. (L. R. No. 1059, dated 12th July 1892; *vide* G. R. No. 6124, dated 28th idem).

6. Registers prepared under the provisions of Part VI of Bombay Act III of 1874 do not fall in the category of 'lists of Matádárs' mentioned in Section 7 of Bombay Act VI of 1887, which really refer to certain lists prepared under an executive order issued by Government in 1866. (G. R. No. 5605, dated 3rd August 1893.)

7. The effect of *Sections* 5 and 7 of the Mátádárs Act, 1887, is that no person is to be entered as a member of a Matádár family in the register prepared under *Section* 5, whose name was not entered in a list of Matádárs made under the orders of Government since 1866 and before the Act came into force, except as specified in the provisos (*a*) and (*b*) to *Section* 7. It would seem that the Legislature intended to make the list, made by orders of Government, conclusive and to exclude from the register those members of Matádár families who had not had their names inserted in them.

The register, having once been made under *Section* 5, cannot be amended under the power given in the last clause of the section by inserting in it the names of persons who had been excluded from the previous lists: this power is only to be exercised whenever any change is made in any of the particulars specified in the register in accordance with the provisons of the Matádárs Act or the Bombay Hereditary Offices Act.

(The Hon'ble the Advocate General's opinion No. 13, dated 2nd March 1896; G. R. No. 3259, dated 20th April 1896.)

8. The difficulty created by the opinion* of the Legal Remembrancer in regard to cases governed by the Matádárs Act arises out of the absence in that Act, of any recognition of the office of Police Patel as distinct from that of Revenue Patel. But if the Matádárs Act and Bombay Act VIII of 1867 are read together, it seems to follow that the former

* No. 1019, dated 15th July 1890, appended to G. R. No. 5394, dated 2nd August 1890, and printed as a foot-note to paragraph 3 of Part IV, Police Patels, of the "Village Officers and Servants" section of the Compilation.

Act governs only the appointment to the revenue patelship, the appointment to the police patelship being a separate question governed by the latter Act, which requires that, *unless the Commissioner sees fit to separate the appointments*, the Revenue Patel shall also be appointed Police Patel, and that in making the appointment regard shall be had to the Hereditary Offices Acts *so far as they may be applicable*. Having regard to these provisions of the law, Government consider that in cases in which there is, as a matter of fact, an admitted or established custom of service as Police Patel, the difficulty arising from the fact that such a custom cannot be separately and authoritatively recognised under the Matádárs Act may be got over by separating the offices under Section 5 of Bombay Act VIII of 1867. The effect of this arrangement would be that appointment to the revenue patelship will be made in accordance with the provisions of the Matádárs Act, while the District Magistrate will be free in the absence of anything applicable to the case in the Matádárs Act to appoint the Police Patel independently and, in so doing, to give effect to the custom of the watan, which, though it cannot be made the separate subject of a declaration under Section 6 of the Matádárs Act as it stands, might be recorded for the purpose by making a note in the mata register in the manner suggested by the Legal Remembrancer in the opinion * embodied in the preamble of Government Resolution No. 5902, dated 2nd September 1887. (G. R. No. 4894, dated 9th June 1894.)

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* No. 1058, dated 12th August 1887, printed as a foot-note to paragraph 3 of Part IV, Police Patels, of the "Village Officers and Servants" section of the Compilation.

PART XV.—DISTRICT HEREDITARY OFFICERS.

1. Allowances continued to hereditary district officers after commuting the claims of the State to service from them can no longer be looked upon as official emoluments, but are in the nature of hereditary personal property and as such should be debited to the head of "Allowances and Assignments under Treaties and Engagements." (G. R. No. 2524, dated 4th July 1864; *vide* also G. I., F. D., No. 2409, dated 13th September 1864, and G. M. No. 3865, dated 7th October 1864.)

2. The procedure suggested by Mr. Gordon, President of the Watan Commission, in his report included in the following correspondence should be invariably adopted :—

"I have the honour to inform you that Bayábái, who manages the watan of her husband Govindráo Trimbak, Deshmukh and Deshpánde of Dindori, in consequence of his being insane, has applied for permission to adopt a son. She has no issue, and wishes to adopt the son of her brother, Raghupat Malhár. Govindráo Trimbak has no heir or relation, and when he dies his family will become extinct.

"2. The aggregate proceeds of the watan amount to Rs. 1,387-15-8, *minus* the amount leviable therefrom according to Mr. Gordon's settlement sanctioned in the Government Resolution No. 1210, dated 1st April 1864, *viz.*, Rs. 390-10-11, at four and a half annas in each rupee. There is no other sharer in the watan, and Bayábái, therefore, begs permission to make the adoption out of the family.

"3. This adoption is admissible in accordance with Mr. Gordon's settlement sanctioned in the Resolution above quoted, paragraph 17, clause 4, but subject to the payment of an annual nazarána of one anna in each rupee, which Bayábái is willing to pay annually in perpetuity.

"4. I have the honour, therefore, to request the sanction of Government to the adoption."

(Letter from the Collector of Ahmednagar, No. 2035, dated 11th October 1864.)

"The President of the Watan Commission, Deccan, has the honour to report that the proposal is in exact conformity with the third promise given in the sanad, and recommends, therefore, that Bayábái be permitted to adopt an heir.

"2. As this is the first case of this sort that has come before Government, it may be as well to take the opportunity of laying down some formal procedure by which the sanction of Government should be recorded.

"3. The best plan which occurs to the President, Watan Commission, to suggest is that an endorsement in English and Maráthi be written on the sanad, and signed and sealed by the Collector, stating that, according to the third promise given in the sanad, and under the sanction of Government No. and date , A has been permitted to adopt an heir, B, and the annual payment on behalf of the watan accordingly is henceforth fixed at Rs. * * "

(Letter from the President of the Watan Commission, No. 94, dated 14th November 1864).

(G. R. No. 4822, dated 5th December 1864).

3. It is not necessary to forego the levy of nazarána of one anna on alienations or adoptions out of the families by district hereditary officers

who have accepted the watan settlement, and in respect of alienation the method least likely to cause difficulty would be to adhere strictly to the terms of the sanads in each case. In the case of watans in which the terms of Mr. Gordon's settlement do not expressly render them alienable without the consent of Government, the Collectors can proceed under Sections X and XI of the Hereditary Offices Act III of 1874 to prevent alienation by attachment or otherwise.

With regard to the continuing of watan emoluments to the widows of deceased holders, if the sanad undertakes to continue to male heirs only, a widow can have no claim, and if there are no male heirs lineal, collateral or adopted, the watan would seem to have lapsed.

(G. Rs. Nos. 3279, dated 2nd June 1876, 6070 dated 8th October 1877 and 2915, dated 23rd May 1881.)

4. Cases of adoptions by district hereditary officers out of the family on payment of nazarána should always be submitted to Government for sanction. (G. Rs. Nos. 6008, dated 5th December 1872, and 3201, dated 18th May 1877).

5. The nazarána taken in the case of district hereditary officers' watans on account of adoptions from without the family is one of the conditions of Mr. Gordon's settlement, and it must, therefore, be continued.

It is undesirable to treat mahál zamindári property converted into private property exactly like ordinary ináms, and it should be registered in the register of non-service watans. In the revenue account it may be treated as inám, being described, however, as settled mahál zamindári lands.

In other cases than the above the Re. 1 nazarána should be levied as hitherto, as it will facilitate the recording of changes of title. But in the case of "Representative Watandár," to whom and to whose widow the Act gives unqualified power to adopt, no nazarána can be levied. (G. R. No. 6282, dated 6th November 1875.)

6. In the case to which Mr. Gordon's settlement of watans has been applied, and which are entered in the Collector's records in the names of the widows of the last recipients who had died without leaving male issue, collaterals who could prove that they were entitled to succeed as next of kin should have their names substituted for those of the widows.

It is evident from the form of sanad issued to district hereditary officers in the Poona District in confirmation of the service commutation settlement made with them by Mr. Gordon, that Government have recognised the right of succession in virtue of lawful adoption by a widow from within

the watan family, and, therefore, that the widow's adoptive son has a perpetual claim over collaterals. A boy adopted by a widow has, according to Hindu law, precisely the same status as if he had been adopted during the widow's husband's life-time. (G. Rs. Nos. 6149, dated 19th October 1881, and 10054, dated 22nd December 1881.)

7. Government do not consider that any sufficient cause has been shown to lead them to any modification of the terms of the sanads granted to Watandárs in the Southern Marátha Country and the Deccan with a view to place these Watandárs on the same footing with those of Gujarát in the matter of female inheritance. The exact terms of the sanad must be strictly adhered to in each instance. (G. R. No. 7659, dated 17th December 1881).

8. Where the watan (Gordon's) settlement has been made with the widows, the sanads, in the accepted form, should be granted to them. The terms which restrict the succession to male heirs, and which under the orders of Government are to be strictly adhered to, cannot be enforced against the particular females in whose favour settlements have been already made and completed in every respect saving the formal delivery of the sanads.

The terms of the sanad are to be observed in questions of succession from the present holders whether male or female, and there is nothing in those terms which bars succession by adoption. But it is to be observed that a childless widow who succeeds by inheritance to her husband's estate, by adopting a son to her late husband, divests herself of that estate in favour of the son adopted and is entitled to maintenance only. If the adopted son is a minor, she can obtain a certificate of administration and guardianship, and continue to manage the estate on his behalf until he comes of age.

In respect of non-service watans in the Khándesh District, Government in their Resolution No. 6149 of 19th October 1881, have sanctioned the proposal of the Commissioner, C. D., that the names of the widows should be retained in the Government books until their deaths, after which event the names of their legal male heirs should be substituted in their stead in accordance with the terms of the Gordon sanad. The form of sanad is, substantially, the same for Thána as for Khándesh and the widows with whom Mr. Gordon's settlement was made should be treated alike in both districts. In case, however, of the adoption of a person within the limits of the Watandár family or of an outsider (provided the general privilege of adopting outsiders who can be legally adopted has been granted) the name of the person adopted should be substituted for that of the widow as soon as the adoption has been made known and not on her death; and this course ought to be followed wherever this form of sanad prevails.

The payment of nazarána is not required except where the above-mentioned general privilege has been applied for and granted.

(L. R. No. 696, dated 15th June 1882 ; *vide* G. R. No. 4326, dated 5th July 1882.)

9. The ruling laid down in the foregoing Resolution No. 4326, dated 5th July 1882, is of general application. (G. R. No. 1184, dated 7th February 1884.)

10. Government are not prepared to abandon the decision resolved upon in 1881 which was that, as the district watan lands and cash allowances in the Deccan and Southern Marátha Country were continuable by the sanads hereditarily to the holders and their heirs, as long as any male heir to the watan lineal, collateral or adopted shall be in existence, the watan property secured by the sanad should be entered in the Government records in the name of the male heir from time to time entitled to succeed to it. At the same time it is stated in the sanad that Government will not raise any objection or question in consequence of the watan property being held by any other person with the consent of the owners under the sanad, and this concession appears to make sufficient provision for any rights of other persons than the male heirs. (G. R No. 1071, dated 4th February 1885).

11. If the widow under Gordon's settlement or the terms of the sanad has no right to succeed to the property, watan or cash payment, she can in no circumstances claim the latter or sue the Collector if he pays it to the lineal male heir who does claim it.

Government have decided to adhere to the view that male heirs only can be recognised under the sanads. The construction of the sanads is, however, proper matter for adjudication by the Civil Courts.

If a widow desires to sue the recognised male heir in order to establish her title to any watan property to which she may consider herself entitled, the Collector should grant her the certificate which would probably be required under the Pensions Act to enable her to institute the necessary proceedings.

(G. Rs. Nos. 10407, dated 24th December 1885, and 1653, dated 2nd March 1886.)

12. With regard to district hereditary officers' watans brought under Gordon's settlement it was ruled by Government on 30th June 1886 that "pending any further judicial decision, the practice of entering the name of the male heir of the original grantee should continue, and there should be no active interference with any holder of the property as long as a male heir is in existence," *i.e.*, that although the name of the male heir of the original grantee is to be entered, Government is not to interfere with the *possession* or *enjoyment* of the *watan property* by whomsoever it may be held so long as a male heir is in existence. Watan pro-